given restricted service. The patrons select and choose the traffic as they see fit.

Mr. Todd: Mr. Examiner, I am going to ask that that statement be stricken from the record. Not that it isn't true but it just doesn't mean anything.

Exam. Lawton: Strike it. Do you compete with contract carriers or do you consider that you do?

A. Oh, yes, sir.

Exam. Lawton: All right, you may answer his question.

A. Yes, sir. I do think it would lessen the movement of [fols. 2396-2397] traffic by contract carriers and then enable the common carrier to avail himself of more tonnage and the further utilization of equipment that he has.

[fols. 2398-2400] Exam. Lawton: Anything else?

Mr. LaTourette: Mr. Examiner, I have one question I promised to ask for the household goods people of this witness. Mr. Walsh, as I understand it, your testimony related to transportation of general commodities by common carriers and did not in any manner concern the transportation of commodities requiring special equipment for household goods?

A. That is correct, yes, sir.

Mr. LaTourette: That is all.

Exam. Lawton: Anything else now? If not, you are excused.

(Witness excused.)

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: We will recess until 9:00 o'clock tomorrow morning.

(At 5:40 o'clock p.m., December 8, 1948, hearing adjourned to 9:00 o'clock a.m., December 9, 1948.)

[fol. 2401] Proceedings—December 9, 1948

Exam. Lawton: Come to order, please. We will resume the hearing.

Mr. LaTourette: I will call Mr. Morrow.

C. R. Morrow was sworn and testified as follows:

Direct Examination

By Mr. LaTourette:

Q. State your name.

A. C. R. Morrow.

Q. What is your occupation?

A. General Freight Agent, Orscheln Brothers Truck Lines, Incorporated, Moberly, Missouri.

Q. Is your company a common carrier transporting general commodities in interstate commerce?

A. Yes, sir.

Q. Under and by virtue of what authority does it engage in that operation?

A. Certificate 49387 and sub numbers.

Q. Will you describe generally the territory in which your company operates, being as brief as possible in the description?

A. Well, we operate generally in the territory surrounded, from Kansas City to Chicago, from Burlington, Iowa south to St. Louis and across Missouri.

Q. Over the routes contained in your certificate what type of schedules do you operate?

[fol. 2402] A. Daily.

Q. And do you have overnight service of those routes?

A. Yes, sir.

Q. How many employees does the company have?

A. Approximately 200.

Q. Where are its principal terminals located?

A. Chicago, Peoria, Quincy, Fort Madison, Iowa; St. Louis, Bowling Green, Hannibal, Macon, Kirksville, Moberly, Columbia, Jefferson City, Carrollton, Kansas City.

Q. Are there any terminals other than those which you have mentioned?

A. Yes.

Q. They are located, I take it, at smaller communities.

A. That is right.

Q. In the States in which you operate?

A. That is right.

Q. How many units of equipment does the company own; and will you describe their type, please?

A. About 90 tractors, I mean about 90 trailers, and about 60 tractors, and 40 trucks.

Q. Now, are the trucks what we know to be straight trucks?

A. Yes.

Q. Are those sometimes used in short haul over the road operations?

A. That is right.

[fol. 2403] By Mr. Diehl:

Q. How many trucks did you say?

A. About 40, I don't know the exact number, Mr. Diehl, it is about that.

By Mr. LaTourette:

Q. Are the straight trucks also used in affording pickup and delivery service in the various communities you serve?

A. Yes.

Q. Does the company operate any vehicles under what we know to be term lease?

A. No.

Q. Does it operate at times vehicles under the so-called trip lease?

A. Yes.

Q. Can you give us some idea of the percentage of traffic in relation to the whole that is transported in company owned vehicles and that transported in vehicles on a trip lease?

A. I would say about one percent or less in trip leases now.

Mr. Diehl: May we go off the record?

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record.

We will take a recess at this time.

(A short recess was taken.)

Exam. Lawton: Come to order please.

We will resume the hearing.

[fol. 2404] Let the record show that we had suspended for 15 minutes because of some of the counsel misunderstood that the date, or the time for convening this morning. It is now 9:30, and if they are not here we will have to proceed without them.

Mr. Diehl: May the record show that Mr. Ellis and I are appearing for the Hincheliff Motor Company.

Exam. Lawton: All right, Mr. LaTourette.

By Mr. LaTourette:

Q. Referring to the trip lease itself, will you tell the Examiner what method of compensation is employed for the vehicle?

A. We pay a flat amount for each load and we make that arrangement on that particular load.

Q. In other words, it is a fixed sum rather than being related to percentage of revenue.

A. That is right.

Q. Were you present in the hearing room yesterday when Mr. J. F. Walsh, traffic manager for Hussman and Roper Freight Lines, testified not only in behalf of his own company but in behalf of other companies whose names are shown in this record?

A. Yes, sir.

Q. Did you hear his testimony with respect to the views of his own company and those for whom he spoke with respect to rule 2 as proposed by the Commission in these proceedings?

A. Yes.

Q. Will you tell the Examiner whether or not you adopt [fol. 2405] the testimony of Mr. Walsh in that regard?

A. Yes, I do.

Q. Do you have any statement to make by way of supplementing Mr. Walsh's testimony with respect to rules relative to leasing of vehicles, or does Mr. Walsh's statement express your views?

A. His views are expressed as far as trip leases are concerned, and I adopt that testimony.

Q. Were you present in the hearing room on yesterday when Mr. M. L. Dean testified as a representative of Hussman and Roper Freight Lines, Inc., as well as certain other

companies whose names are shown in this record, with respect to the rule proposed by the Commission being Rule 3 respecting the interchange of equipment?

A. Yes.

Q. Will you tell the Examiner whether you adopt Mr. Dean's views in that matter, or whether you have any other statement to make?

A. Yes, we adopt his views with the exception of the last paragraph on page 3, in which——

Q. Do you mean page 3 of the prepared statement?

A. That is right, in which he proposes sub-leasing. Personally, we are opposed, our company is opposed to the subleasing of equipment after it has once been leased, and also we, our company, would suggest to the Commission that the interchange of equipment in their rules would be permissive rather than required by motor carriers so we could [fol. 2406] use our own option whether or not we desire to.

Q. Well, do you understand that the rule places no compulsion upon motor carriers to interchange equipment, but isn't it rather a statement of the terms and conditions under which carriers may interchange equipment if they should

A. That is right, I think, but I would not be sure.

elect to do so?

Q. I believe you had, Mr. Morrow, in mind some statement you wished to make in connection with Rule 4 in these proceedings, did you not?

A. Yes, sir.

Q. Will you tell the Examiner what your views are with respect to that rule?

A. Our views are, on Rule 4, that the rule in toto should read, authorized carriers are prohibited from renting equipment to non-carriers with or without drivers p-e-r-i-o-d.

Q. In other words, speaking for your company, you would wish to see a rule which would prohibit carriers of any type from leasing to private carriers and shippers.

A. That is right.

Q. Do you have any basis for your statement?

A. Yes. First, in our territory, the leasing to shippers in our opinion creates a chance at least for rebating camouflaged in the term of a lease. It does break down the rate structure of common carriers because the leases that have

[fol. 2407] come to my attention are, as far as revenue is concerned, considerably less than the motor common carrier rates in our territory, particularly the rates contained in our tariffs, that is Orscheln Brothers tariffs.

Q. Have you any opinion with respect to traffic that your company loses by reason of vehicles being leased to shippers for transportation of the property of that shipper?

A. Yes.

Q. Would you give us some illustrations of that?

A. Well, I can sit in my own office window and see a haul directly across the street that is handled by leases of various, different stock haulers on leased equipment of others, and that happens from one to four times a week, and at one particular spot. At Columbia, Missouri, there is considerable——

Q. When you say you sit in your office and look out the window, do you mean your office at Moberly, Missouri.

A. That is right.

Q. So this shipper to whom you refer would be located at Moberly, Missouri.

A. That is right.

Q. Do you know where the traffic moves to?

A. Belleville, Illinois. The empty beer cases move to Belleville, Illinois, and the full loads back.

Q. This is, apparently, then a beer movement?

A. That is a beer movement.

[fol. 2408] Q. The beer thus moving from Belleville, Illinois to Moberly, Missouri, and the empty containers being returned from Moberly, Missouri to Belleville, Illinois. Is beer traffic attractive to your company?

A. Yes, sir.

Q. Now, go ahead, please.

A. Because that gives a full load in both directions, the container going in and the beer coming out.

We have lost hauls to a truck line in Columbia, Missouri, of household goods after we have quoted our rates to them, and this carrier or this lessor locates those customers, in one particular instance recently, and hauled that traffic at a truckload rate that was considerably less than our rate.

Q. And was this an authorized carrier who leased the

vehicle to the prospective mover for the transportation of household goods in this instance?

A. In this instance, some private——

Q. Some private person?

A. That is right. That is the purpose of wanting Rule 4 there for, and it is our intention of going to the Missouri Legislature and try to go through the Congress of the United States to get a leasing law established.

Q. Do you have any other illustrations in mind presently where in your company lost traffic by reason of leases to shippers or private carriers; I assume there have been others.

[fol. 2409] A. Yes, we have lost traffic to our territory generally through the leasing by a common carrier of local delivery services particularly at Moberly, Missouri.

Q. I do not understand what you mean by that. Will you clarify that, Mr. Morrow?

A. Yes. Well, the Brooks Truck Company leases, or did lease, they now have sold their authority, but they did lease the Mallory Goad Transfer Company. The transfer company is a certificated carrier. They have leased that equipment to serve the territory on strictly a lease basis. Some of it was short time leases, some of it was long time lease.

Q. That is the equipment of this transfer company?

A. That is right, and after that first few leases, then it became widespread only, it was in Moberly, Missouri. Now, then, that carrier today has found that there is a company, rather have found that there is profit in hauling and now they have before the Missouri Commission an application for authority to serve the very territory they have been handling on a lease, and naturally that carrier will not go out of the State of Missouri, but it is their intention then to register their Missouri intrastate authority with the Interstate Commerce Commission and will be in position to haul interstate traffic.

By Mr. Diehl:

Q. Mr. Morrow, how do you know it is their intention? I object to that statement to that extent. He does not know what their intention is.

[fol. 2410] A. Well, it has been stated to me.

By Mr. LaTourette:

Q. By the lessor of these vehicles?

A. By the attorney representing the carrier.

Mr. Diehl: I still move that the answer be stricken as to what he thinks they intend to do. He does not know any more about it than I do.

By Mr. LaTourette:

Q. Has there been an application filed with the Missouri Public Service Commission?

A. It is on file right now.

Q. Then it is not a matter of intention, but actually an accomplishment at this time?

A. That is right. I have a copy of the application.

Mr. LaTourette: I assume that satisfies you, Mr. Diehl?

Mr. Diehl: No, it does not, Mr. LaTourette. I was concerned with his statement, he intended to file with the Interstate Commerce Commission.

By Mr. Diehl:

Q. Have they filed anything with the Interstate Commerce Commission?

A. No, sir.

Exam. Lawton: They could not do that until the application is granted.

Mr. LaTourette: They could not.

Mr. Diehl: I know they could not, Mr. Examiner. He does not know what they intend to do.

Mr. LaTourette: I assume, Mr. Examiner——

[fol. 2411] Mr. Diehl: I will withdraw the objection. Go ahead.

Mr. LaTourette: All right.

By Mr. LaTourette:

Q. Has your company ever engaged in the practice of leasing vehicles to shippers, private carriers?

A. We have.

Q. You have not?

A. We have.

Q. You have?

A. Yes, sir.

Q. Have you done that recently?

A. No, sir, but we did it on several occasions in the last ten years.

Q. In the last ten years on several occasions?

A. Yes.

Q. It has not been a general practice?

A. No, sir.

Q. Where it was engaged in, in those isolated instances, what prompted the leasing of the vehicle at that time?

A. The shipper wanted to handle their own commodity because it was fragile.

By Exam. Lawton:

Q. When you did that leasing to the shipper, did you furnish the driver with the vehicle?

A. The driver only. They furnished the labor, we furnished the driver.

Q. The driver and the truck?

[fol. 2412] A. The equipment.

Q. The trailer?

A. That is right.

By Mr. LaTourette:

Q. How long ago was it since you last leased a vehicle to a shipper?

A. About two years ago, we leased a truck to the Noell Wholesale Grocer Company at Columbia, Missouri, because their truck burned up in an accident, and the reason of leasing that truck, there was no carrier could serve the points to which their commodities were delivered, because there was no regular route authority to the territory out in the country.

Q. Now, you mentioned that this particular carrier presently having an application on file with the Public Service Commission of Missouri for authority was one which originally entered the transportation field by leasing to shippers.

A. That is right, by leasing to a truck line and to shippers.

Q. What is your view as to the effect upon common carriers as to the result of leasing of vehicles to shippers by either carriers or owner-operators of vehicles?

A. Well, I think it lessens our chances of getting revenue for a haul. It takes it away from us. It is a financial loss.

Q. Do you have any other statement, Mr. Morrow?

A. Now, it is our view that if the Commission prescribed rules for trip leasing, that the trip leasing should be round trip, and that in addition to the suggestion by others that [fol. 2413] have testified to the requirements as set out in the Commission's suggested rules, we would add to that the requirement that the carrier should prove to himself through the drivers logs, of the driver who is compelled now to keep those logs for 30 days to assure him that the driver has 70 days previous to his leasing, that he has had proper rest.

By Exam. Lawton:

Q. 70 what?

A. Proper rest.

Q. You mean 70 hours?

A. 70 hours, yes, or a full week. I used the 70 hours because there are two sets of hours, one is 70 for a type of carrier, and one is 60. Also that trip lease should not be permitted under 300 miles. I agree to Mr. Bockstahler's statement along that line.

By Mr. LaTourette:

Q. Mr. Bockstahler?

A. Yes, and no lease should be under the 180 days as suggested. Now, with that statement in mind, that would permit carriers to then invest in equipment for use in their own operation, and have a fuller control over their employees, and could keep their equipment up so that they could render the service that has been granted to them under the certificates.

I think that is all.

Mr. LaTourette: You may cross-examine.

Exam. Lawton: Cross-examine.
Mr. Diehl?

[fol. 2414] Cross Examination

By Mr. Diehl:

Q. Mr. Morrow, are you for or against trip leases?
A. I am against trip leases.
Q. Does your company at the present time employ trip lease operators?

Mr. LaTourette: That is repetition. It was brought out on direct examination just what they did.
Exam. Lawton: He testified that they did.
Mr. Diehl: I am sorry. I was out of the room when he testified.
Exam. Lawton: One percent, Mr. Diehl.
Mr. Diehl: Thank you.

By Mr. Diehl:

Q. Is the level of rates of your company on a comparable level with other companies operating in this area?
A. I would say our rates are higher, and I would like to modify that.
Q. Just a minute, please. You can do it on redirect.
A. All right.
Q. Or explain later, I would like to ask you a couple questions.
A. All right, sir.
Q. Is your insurance premium higher because of the use of trip lease operators, if you know?
A. I don't know. We have a very low rate on insurance.
Q. Have you been using trip lease operators for some time?
[fol. 2415] A. Yes, at St. Louis.
Q. You don't know what affect——
A. Sir?
Q. Your insurance is not high, and I take it you do not know of any effect to increase insurance that the use of these trip lease operators might have, is that right?
A. I think I will say yes to that.

Mr. LaTourette: I do not quite understand the answer to that. Your insurance is higher because of that, or you don't know?

A. I said I did not know.

By Mr. Diehl:

Q. Did you hear my cross-examination of Mr. Walsh yesterday?

A. Yes, part. I was not here through his testimony and your cross-examination.

Q. You say you did not hear all that?

A. That is right.

Q. If I understand you correctly, on direct, you are recommending prohibition by the Interstate Commerce Commission against a company holding authority from that Commission leasing to a shipper?

A. That is right.

Q. Is it your opinion that the Interstate Commerce Commission should prohibit the leasing of equipment by anyone to an individual for the movement of his personal [fol. 2416] property, I mean by that private carrier, of course.

A. Repeat that to me.

Exam. Lawton: By anyone?

Mr. Diehl: By anyone.

Exam. Lawton: You did not confine it to a carrier.

Mr. Diehl: No sir, I certainly did not.

A. I don't think the Commission has jurisdiction to keep you, if you own a truck, from leasing it to anybody you want to.

Mr. LaTourette: Do you mean, Mr. Diehl, as an individual? I don't know whether he owns a truck, but you are referring to him as an individual.

The Witness: That is right.

By Mr. Diehl:

Q. A truck company, not certificated or permitted by the Interstate Commerce Commission, from leasing equipment to private individuals for transportation of their own property.

A. Do you mean on a long term or short term lease?

Q. It makes no difference, for the purpose of my question, whether it be a minute, or a week or a month.

A. I will say no, I have no objections to that.

Q. Do you know of any reason why a prospective lessee of equipment could not get any type of equipment from a rental company that he might get from a common carrier or private or contracting carrier?

A. I don't know.

[fol. 2417] Q. Sir?

A. I don't know. I don't know anything about a leasing company other than the Columbia Terminal leasing to the Missouri Pacific. I understand they do that. That is all I know.

Q. Do you see anything wrong with that operation that you just mentioned?

A. No. That is the reason I just asked you, long term. I do not see anything wrong about a leasing company leasing to a common carrier; the rail carriers have long term leases, as set up in Rule 3.

By Mr. LaTourette:

Q. You mean under Rule 2, not Rule 3.

A. Yes, Rule 2, yes. Excuse me.

By Mr. Diehl:

Q. Are you a practitioner admitted to practice before the Interstate Commerce Commission?

A. Yes sir.

Q. Is it your opinion that the Interstate Commerce Commission as of now has sufficient authority at law to establish the regulation which you have suggested with respect to leasing——

Mr. LaTourette: I object to that question.

Exam. Lawton: Objection sustained.

Mr. Diehl: I have no more questions.

By Mr. Todd:

Q. Mr. Morrow, this leasing operation that you were describing, that you can look out your window in Moberly and

see the transportation of malt beverages, I take it, and empty containers in the reverse direction, do you know [fol. 2418] whether the lessor of that equipment has furnished the driver to the shipper?

A. I know he has, yes.

Q. Do you know whether that service is performed on a one-trip basis or is it a long term agreement?

A. One day, two days.

Q. Two days?

A. I have a lease right here.

Q. And it is for a trip up and a trip back, is that right?

A. That is right.

Q. Is that a carrier certificated by the Interstate Commerce Commission, performing that service?

A. In that particular instance, no.

Q. It is not?

A. No.

Q. So that if the Commission should establish the rule which you have suggested it would not cure the situation in Moberly at all, would it.

A. On that particular haul?

Q. Yes.

A. I do not think it would.

Q. I take it, Mr. Morrow, that you keep up with the various decisions that are handed down by the Courts and the Commission that affect transportation, isn't that correct?

A. I try to, but I don't.

[fol. 2419] Q. Do you know whether or not this last, in the early fall, I suppose, there was a case up in Minneapolis in which a Court found guilty of violating the Interstate Commerce Act a person who leased a truck and driver to a shipper?

Mr. LaTourette: Are you referring to the F and F Truck case?

Mr. Todd: Yes.

A. I have that citation. I have not read it.

By Mr. Todd:

Q. Don't you believe, therefore, Mr. Morrow, that the operation being conducted at Moberly at the present time, that disturbs you, is in violation of the Interstate Commerce Act as it has been interpreted by the Courts?

A. I have not read that decision and I can't answer it.

Q. Oh, I thought you said you had it right before you.

A. I said I had the citation, somebody gave it to me yesterday.

Q. I beg your pardon. I thought you said you had read it. If I should tell you that the Court in that case did find a person leasing a truck and driver to a shipper to be engaged in a transportation service in interstate commerce and found guilty of violating the Interstate Commerce Act because they did not have a certificate or permit, would you say that that same theory would apply to your situation at Moberly?

A. Yes.

Q. Now, taking the household goods carrier in Columbia who, I believe you said, leases trucks to shippers?

[fol. 2420] A. Yes.

Q. Is that carrier certificated by the Interstate Commerce Commission?

A. I can't answer you that. It is the Williams Truck Line, Columbia, Missouri. I don't know whether he is certificated or not.

Q. Now, do you know whether that carrier leases its equipment with or without drivers?

A. With.

Q. With the driver?

A. Yes, so much a load.

Q. So he charges a given price per truckload, is that correct?

A. That is right.

Q. There isn't anything then that a common or a contract carrier hauling truckload freight does this particular carrier in Columbia isn't doing at the present time?

A. Would you read that question?

(The question was read.)

Q. In other words, the services of the man at Columbia is comparable to a regular for hire transportation service, isn't that correct, in that he is furnishing a truck and driver.

A. Yes, yes, that is right.

Q. Now, I believe you also referred to the Merry Transfer Company in Moberly?

A. Mallory.

[fol. 2421] Q. Mallory Transfer Company, Moberly, Missouri, leases equipment to shippers at that point?

A. Yes, he leases to shippers at that point, but that is not the testimony with reference to Mallory Truck Line. I said he had been leased by the Brooks Truck Company and now then has filed for a certificate to do the very thing that he was leasing to do when he worked for the Brooks Truck Company.

Q. Oh, I see, he was an owner-operator?

A. That is right.

Q. Working for Brooks, is that right?

A. That is right. Now, the Goad part of it is a certificated carrier, and they joined the Mallory, Goad Truck Lines.

Q. But he was not engaged in the practice of leasing equipment to shippers?

A. Yes, he has leased to shippers, too.

Q. Well, now, in handling that operation does he furnish a driver as the other two persons have done?

A. That is right.

Q. And does he do that on a long term basis or is it on a trip basis?

A. I have not seen any of his leases.

Q. Now, I believe you said that the last lease that your company had was with the Noell Wholesale Grocer Company of Columbia, Missouri?

A. A long term lease to a shipper, that was for a couple months.

[fol. 2422] Q. And did you furnish the driver in that particular situation?

A. No.

Q. Was that on the service that you performed for Noell, all that was furnished them, a piece of equipment, isn't that correct?

A. That is right, tractor and trailer.

Q. Now, if you had not been willing to furnish this tractor and trailer to this wholesale grocery without a driver, wouldn't it have been possible for that concern to have gotten a tractor and trailer from, say Hertz Drive-it-yourself, or some other leasing company, that has no authority?

A. I would say yes. They finally got their own equipment, give us ours back.

Q. And I don't want to ask you, Mr. Morrow, anything concerning the exact rate, but in arriving at a rate for the lease of that equipment, did you predicate it on the cost of operating the truck plus a reasonable profit to your company?

A. You mean to the Noell Wholesale?

Q. Yes.

A. No. We agreed on a sum for a length of time.

Q. Did the sum that you agreed upon take into consideration your operating costs?

A. Well, when that was leased to Noell Wholesale Grocer, we never paid much attention to the cost or anything, it was an emergency, and we agreed on a stipulated amount, of course the costs were in there and we made a [fol. 2423] profit on the deal.

Q. Your rate was not necessarily predicated on your common carrier charges, or commodity common carrier charges?

A. No, because that operation was from out in the Counties, all over the different towns, to the little stores that they had to deliver their groceries to.

Q. It was an irregular route distribution type of service, was it not?

A. That is right, for the wholesale grocer.

Q. Now, is it your testimony, Mr. Morrow, that where there are common or contract carriers who lease their equipment with drivers to shippers, that that is an additional competition for motor, for common carriers, such as Orscheln Brothers?

A. Certainly.

Q. And I take it you find that type of competition to be difficult to meet, is that correct?

A. That is right.

Mr. Todd: That is all I have. Thank you.

Exam. Lawton: Is there any one else that has any cross-examination?

By Mr. Keas:

Q. I think you said that if a trucking company leased a truck from an owner-operator they should be required to screen the driving log to see that he had the required amount of time off.

A. That is right.

[fol. 2424] Q. I think you said rest, but off, isn't it?

A. Rest or off duty, yes, to see that he has had his required rest as required by the safety rules.

Q. Does he stay with the truck driver to see what he does during that time?

A. Sir?

Q. Stay with the truck driver to see what he does during that time?

A. Well, of course, if he cheats on his drivers log, you can't help that.

Q. No, but I am talking about the time off, what he does with his time off.

A. We don't know what any of our drivers do with the time off.

Q. That is what I thought. If the certificated carrier were required to properly examine the drivers log to see that they had their time off, just as their own drivers had, what would be the objection to trip leasing?

A. Well——

Q. From a hazard standpoint.

A. Oh, from a hazard standpoint?

Q. Yes.

A. Well, we have had some deaths with owner-operators. We have had turn-overs, and we have had considerable trouble with them as well as with our own people. We have a death right here in St. Louis with an owner-operator.

[fol. 2425] Q. Was that caused by the fact that you did not screen his drivers log?

A. No.

Q. Well, what I asked, if your screening the drivers log, is there any reason to believe there would be any more hazard arising from the fact that they had eight hours off,

or the required time off, the same as your own drivers? What is the objection?

A. I can't answer that.

Q. What is the objection to trip leasing if the rules are set up so that the required time off is given to the owner-operator?

Mr. LaTourette: Now, we got two questions, one right after the other. I don't know whether Mr. Keas was going to withdraw the first one.

Exam. Lawton: I gathered that he was.

Mr. Keas: Yes.

Exam. Lawton: Do you understand the question now?

The Witness: No sir.

Exam. Lawton: Read the question.

(The question was read.)

A. Well, now, you are inferring——

Exam. Lawton: Do you mean from a health and safety standpoint, Mr. Keas?

Mr. Keas: From a safety standpoint.

A. Well, that of course, is not exactly my objection to the [fol. 2426] trip lease, and I will say I don't know to your question.

By Mr. Keas:

Q. I would like to ask him what his objection is.

A. The objection to trip leasing or leasing at all by us, except long term leasing of equipment without a driver is, first, we use union employees in our operation, and those employees, most of them own their homes in these little towns where we operate, and when we use an outsider to take the place of one, and that is what you actually do, one of those drivers, he loses a trip. Another thing is that when we go to the Commission and ask for our certificates to be granted to us we ask them for that certificate and it is granted, then we dedicate our equipment, our service, our facilities and all to the public. The public thinks that they are being, their shipments are moving in owned, controlled vehicles to destination. Now, I am going to explain it to you——

Q. Now——

Mr. LaTourette: Let him finish.

By Mr. Keas:

Q. I am just wondering how he knows, how the public feels.

A. Well, I was a traffic manager at the time the motor vehicle law was first passed in Missouri, Festus, Missouri, for nine factories in that territory, and I used a lot of truck in the early days before we had the highways. Now, then, you dedicate that service to the public, then it belongs to the public. They pay you the freight rate to keep your [fol. 2427] equipment in good condition and give you a little higher money on that so you make your profit out of your operation. Now, in other cases, myself particularly, I protested a lot of applications for certificates before various Commissions, including the Interstate Commerce Commission, and at all times when my testimony goes in, I testify under oath that we are able, fit and willing and will augment our equipment by purchase of new equipment, and I think every truck line in the country does that same thing, and that is their testimony before me. Now, when you do that, then certainly you owe to the public your own equipment, or long time lease equipment. I don't think you have any right to use emergency equipment, and by one of these leases to tear down the thing that you have tried to build up. That is my reason I am against trip leases, one of them.

Q. You don't think you should lease a truck to the grocer, then?

A. Yes.

Q. You said you did not think, you go on, you did not think you should lease anything to anybody, under emergencies?

A. That is right.

Q. You did not?

A. I did not say an emergency.

Mr. LaTourette: That is argumentative, Your Honor.

Mr. Keas: Of course, we had a speech. I have never been able to find out what the answer to the question was.

Exam. Lawton: Probably the best answer you can get. [fol. 2428] Are you through, Mr. Keas?

Mr. Keas: Well, the answer did not relate to hazards at

all. It related to the interest the man had in his drivers living in nice homes, and in the community.

Exam. Lawton: I think on the point of difference from the standpoint of hazard, he said he did not know, conditions as to an inspection of drivers log was equal; wasn't that your answer, Mr. Morrow?

The Witness: Yes, and then he asked the second question why, and then I went on and explained it to him the best I knew how.

Exam. Lawton: Is there any redirect examinations?

Mr. LaTourette: That is all.

Exam. Lawton: You are excused.

(Witness excused.)

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record.

Are there any additional appearances?

Mr. Raymond: Clarence Raymond, 1003 L and N Building, 908 West Broadway, Louisville, Kentucky, appearing for Louisville and Nashville Railroad Company. I am an attorney and registered practitioner.

Exam. Lawton: Are you ready to proceed now, Mr. Raymond?

Mr. Raymond: Yes, Mr. Examiner.

[fol. 2429] Exam. Lawton: All right, you may call your witness.

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George H. Uhl was sworn and testified as follows:

Direct examination

By Mr. Raymond:

Q. Will you please state your name.

A. George H. Uhl.

Q. With what company are you connected?

A. L and N Railroad Company.

Q. How long have you been in its employ?

A. Over thirty years in the traffic department.

Q. What is your title?

A. Assistant to the Freight Traffic Manager.

Q. Does your company conduct any motor carrier operations?

A. It does.

Q. It holds a certificate from the Interstate Commerce Commission, does it not, authorizing certain motor carrier operations, in Docket MC-89811?

A. Yes.

Q. You are familiar with those operations?

A. Yes.

Q. Do you have a prepared statement which you would like to read into the record?

A. Yes, sir.

Q. Will you proceed with your statement?

A. The Louisville and Nashville Railroad Company which [fol. 2430] holds a certificate of public convenience and necessity from this Commission pursuant to its reports and orders in Docket MC-89811, 28 M.C.C. 5, 30 M.C.C. 121, authorizing it to conduct certain motor carrier operations as therein stated, desires briefly to present and explain its situation to the Commission in so far as this particular investigation is concerned.

This Company owns no motor vehicles which are used in the conduct of its interstate common carrier truck operations. Its motor carrier operations are conducted with equipment leased from the Railway Express Agency, the Express Agency furnishing the drivers as well as the vehicles. At the hearing before the Commission on this Company's application in Docket MC-89811, we outlined our plan of operation with leased equipment. In its decision in this docket, 28 M.C.C. 5, the Commission at pages 12 and 21-22 reviewed this plan, describing the lease agreement or arrangement which this company had with the Railway Express Agency, said agreement being dated January 26, 1939. This contract was filed as an exhibit in the record in that docket, and it provided, among other things, that compensation for the leased equipment, with drivers, would be on a mileage basis and that the lease contract would run indefinitely, subject to a 90-day cancellation clause. Under date of July 29, 1948, this company entered into a new contract with the Railway Express

Agency, which superseded and changed the original contract in two respects: (1)—The compensation for the lease [fol. 2431] of equipment, with drivers, is now on a cost basis plus interest on investment with depreciation charge based on mileage, and (2)—The new contract runs for a period of 90 days and thereafter shall continue in effect, subject to a 60-day cancellation clause.

The vehicles leased by the L. & N. Railroad from the Express Agency have the name of the railroad painted thereon, and, under the contract, such vehicles are to conform to the safety regulations of the Commission and other governmental authorities; and the drivers shall be competent and duly qualified in all respects as required by law or the rules or regulations of constituted regulatory authorities. The railroad may request for good and sufficient cause, that any driver be displaced on said vehicles. The Railway Express Agency inspects and makes certain that the vehicles conform to all safety regulations. During the term of the lease, the leased vehicles and drivers are under the control and supervision of the railroad, and the vehicles are used exclusively by the railroad in the performance of common carrier truck operations under its certificate. All shipments handled in such vehicles move on railroad bills of lading at the railroad rates, and all transactions are between the railroad and the shipping public.

The Commission in granting our application in 28 MCC 5, after reviewing the plan of operation with leased equipment as I have mentioned, indicated that the railroad was to exercise direction and control over such vehicles, and [fol. 2432] that such vehicles were to be operated under its responsibility to the general public as well as shippers. The leased vehicles used in our operation have always been under the direction and control of our railroad.

The L. & N. respectfully submits that in the conduct of its motor carrier operations it should be permitted to lease equipment as it has heretofore done under an arrangement similar to that described in Docket MC-89811.

In the Commission's order of January 9, 1948 instituting this investigation one of the questions to be determined is whether the use of leased vehicles by motor common and contract carriers should be limited to a fixed percentage

of the number of vehicles to which the using motor carrier holds title.

The L. & N. as stated above, owns none of the motor vehicles used in its common carrier truck operations, and if the use of leased vehicles by it should be limited to a fixed percentage of the number of vehicles to which it holds title, the effect of such a limitation would be to prohibit entirely its leasing of motor vehicles, since it holds title to none of the vehicles used in its motor carrier operations.

Rule 2, paragraph (h), of the rules proposed by the Commission provides:

"The person assigned to drive equipment operated under this rule shall be an employee of the carrier and his wages shall be separate and distinct from the charges made for [fol. 2433] the use of the equipment and shall not be made part of the terms or conditions of the contract, lease, or other arrangement covering the use of the equipment."

This company believes that since the Commission has particularly considered the leasing plan and found no fault with the arrangements under which it is now conducting its motor carrier operations, paragraph (h) of Rule 2 should not apply to its operations, inasmuch as paragraph (k) of that rule exempts "operation of equipment by any carrier in accordance with a plan heretofore submitted by such carrier in a formal proceeding and specifically approved by the Commission." If, however, our company is not exempt from the requirement of Rule 2, paragraph (h), it respectfully requests that an exemption be made in order to permit it to continue to conduct its operations under a lease agreement whereby the motor vehicles, with drivers, may be leased as above described, which plan, as stated, has previously had consideration by the Commission in Docket MC-89811.

Our company has received no complaints from any source concerning failure to observe safety regulations of this Commission or any other governmental authority. It likewise knows of no objectionable practices or abuses that have occurred as a result of the arrangement whereby vehicles are leased from the Express Agency for the performance of our trucking operations.

[fol. 2434] Exam. Lawton: Is there any cross-examination of this witness?

The Examiner hears none.

You are excused.

(Witness excused.)

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[fol. 2435] DAVID H. RATNER was sworn and testified as follows:

Direct examination

By Mr. Todd:

Q. Will you give the Reporter your full name and business address, please?

A. David H. Ratner, 7000 South Pulaski Road, Chicago, Illinois.

Q. Are you engaged in the motor carrier business, Mr. Ratner?

A. Yes sir.

Q. With what companies are you connected?

A. I am the president and general manager of the Midwest Transfer Company of Illinois, and the Emery Transportation Company.

Q. Would you describe briefly for the record the nature of the business of the Midwest Transfer Company of Illinois?

A. The Midwest Transfer Company of Illinois is a contract motor carrier operating in interstate and intrastate commerce in twelve states throughout the midwest transporting principally roofing and building materials and related articles, such as fence wire and sewer tile.

Q. What is the nature of the business of Emery Transportation Company?

A. The Emery Transportation Company is a contract motor carrier operating in interstate and intrastate commerce, operating from the Atlantic seaboard to the midwestern states of Minnesota and Iowa, transporting principally food products and groceries.

[fol. 2436] Q. How many motor vehicles does the Midwest Transfer Company own, breaking them down into tractors and trailers, Mr. Ratner?

A. The Midwest Transfer Company owns approximately 100 tractors, 300 semi-trailers, 25 straight trucks.

Q. How many pieces of equipment does the Emery Transportation Company own?

A. Fifty tractors and 100 semi-trailers and 200 straight trucks.

Q. Does the Midwest Transfer Company have in its services any owner-operators under long term lease arrangements?

A. Yes, sir, it does.

Q. How many such owner-operators are employed by Midwest?

A. The Midwest Transfer Company employs two types of owner-operators, those which own their own tractors and those which own their own tractors and trailers, and they employ about 50 who own their own tractors and trailers and 175 who own their own tractors.

Q. Does the Emery Transportation Company have any arrangements of this kind with owner-operators?

A. Yes sir, they do.

Q. How many such arrangements does that company have?

A. They have about 10 operators who own their own tractors and trailers and 50 who own their own tractors.

Q. Now, does the Midwest Transfer Company as of the present time employ any itinerant truckers under a trip lease arrangement?

[fol. 2437] A. In various territories I guess they describe these fellows by different names. I gather that you mean the itinerant truckers sometimes referred to as a gypsy operator or wild catter.

Q. Yes sir.

A. In this territory and in our company we refer to these fellows as wild catters. We do employ wild catters on trip lease basis from time to time.

Q. Approximately what percentage of the business of Midwest would you say is handled under arrangements of that kind?

A. Approximately—well, that varies with the season, but it would run from 5 to 10 percent.

Q. During the year?

A. That is right.

Q. Now, does the Emery Transportation Company employ the itinerant or gypsy trucker on a trip lease basis?

A. Yes sir.

Q. And approximately what percentage of its business is handled in that manner?

A. About 10 percent.

Q. Mr. Ratner, I believe I failed to ask you how long you had been engaged in the motor carrier business?

A. About 20 years.

Q. And how long has the Midwest Transfer Company, to your knowledge employed the use of an itinerant or gypsy trucker?

A. We have been using them since we first started in [fol 2438] business more or less at different times.

Q. I mean how long have you used that type of operation in the Emery Transportation Company?

A. Well, I purchased the Emery Company only about five years ago, four years ago, and have used them since I purchased the company. I believe that they did in the past even before I purchased the company.

Q. Do you have personal knowledge then, Mr. Ratner, as to the conditions surrounding the use of the itinerant or trip lease operator in the territory in which you operate?

A. I can refer to these fellows as wild catters, and I think I am pretty well qualified to, or at least have had a lot of experience in the use of these fellows and know considerable about the manner in which they operate in this territory.

Exam. Lawton: Let me ask, is there any proper connotation of that term "wild catter"? This is the first time, I believe, we have heard that.

Mr. Todd: I don't believe so, Mr. Examiner.

The Witness: May we be off the record?

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record.

Proceed.

By Mr. Todd:

Q. Mr. Ratner, from the standpoint of controlling the safety of operation of your company, do you believe that [fol. 2439] it is desirable to continue the use of the itinerant trucker on a trip lease basis?

A. Absolutely not. I would advocate that they be regulated in such a manner to eliminate the trip leasing of trucks as soon as possible.

Q. Does that theory or that opinion of yours apply to the trip leasing between authorized carriers, or do you confine it to trip leasing of the owner-operator or itinerant trucker?

A. I can see no objection and would like to see continued the use of trip leasing privileges between carriers where an authorized carrier would trip lease its vehicle to another authorized carrier.

Q. Now, would you please explain to the Examiner why you believe it is difficult to control proper and safe operations of your company and use the itinerant trucker?

A. Well, in the first place, the administrative burden of examining the vehicles of these wild catters and examining their log sheets, and arranging for physical examination of the drivers, would be impractical for the short operation of only a one way trip. In using the owner-driver on a permanent basis you could set up a certain formula and procedure in your operation, and your logs are sent in daily and checked daily, and your equipment is checked daily at both ends of the operation. You get a certain routine established in doing those things and the cost and the burden from the standpoint of ability to *to* do it as [fol. 2440] well as the cost of doing it, is routine and not burdensome, but when you do it on an isolated basis for a trip lease fellow it is just impractical to do it properly. You are not set up to do it and it is done in a haphazard manner. The inspections of the vehicles are quick, casual, no thoroughness is gone into for braking and lights and identification of safety equipment, or examination of the tires, or a determination to determine when the rear end or wheels were greased last, or those mechanical parts of the truck. It is a hasty, quick examination and it is not a satisfactory one, in my opinion, and I think it is just an impractical way of operating.

Q. Now, when you use these operators on a long term basis is the equipment which they own decorated in any particular way, Mr. Ratner?

A. In our operation, when we use an owner-operator on a full time basis his truck is painted and lettered and identified in exactly the same manner that our own trucks are. To all intents and purposes no one could tell the difference.

Q. Is the driver of that equipment your employee?

A. Yes, sir, he is. We make out two checks to the owner-driver who works for us on a full time basis—one for his salary and one for his equipment, and on the salary portion of his check we pay social security taxes, old age unemployment taxes, we carry group insurance which is available to the full time operator, he enjoys a vacation benefit [fol. 2441] and is treated in every way as if he were an employee without his vehicle. There is just no differential.

Q. Is that same practice followed in connection with the use of a trip lease operator?

A. No, sir, it is not.

Q. Do you know generally in the territory in which you operate whether that practice is followed with respect to the trip lease operator?

A. I have a general idea, and from contact in the industry I know that it is not.

Q. Now, how do you arrange, Mr. Ratner, in handling trip lease operators to obtain or see that they have a doctor's certificate?

A. We first ask the driver if he carries with him a certificate indicating his last physical examination and the doctor's comments on it. If he has it he produces it, shows it to our dispatcher or supervisor who has engaged him for that trip. Very seldom he has an extra copy that he can leave with our office. Generally he just produces the one copy that he carries with him and shows it to him. In some cases they do not even have a certificate, and then wherever practical we try to arrange a physical examination before sending him out on the trip, and in some cases we are unable to do that, we send him out without a physical examination.

Q. Do you ever have to turn these men down because they [fol. 2442] are unable to pass a physical examination?

A. Yes sir, we have. There have been times when we would employ the owner-driver at times, for example at 12 noon, and put his truck into a shipper's platform to be loaded, and then arrange for him to appear at a doctor's office for a physical examination, and we have had the doctor call us and tell us the man was physically unfit to drive a truck, and we had to unload the cargo off the truck and turn him down for that trip.

Q. Now, in addition to these factors that concern safety, do you have any other objections to the use of the itinerant trucker on a trip lease basis?

A. Yes sir, I do. I think they are destructive to the industry. I think it is bad for the financial policy of the trucking industry.

Q. In what respect?

A. Well, in the first place, these fellows create a condition at certain ends of the territory where the traffic is extremely light. They will come into a town—St. Louis is an example of that territory. The traffic out of St. Louis is lighter by motor truck then the traffic into St. Louis.

By Mr. LaTourette:

Q. Are you speaking of the eastern territory?

A. I am talking about traffic moving north and east out of St. Louis. In my experience the traffic moving into St. Louis from the north and from the east is heavier than the traffic moving back into that direction; therefore, you find [fol. 2443] this condition that an owner-driver who operates as a wild catter or a trip lease operator will suddenly find himself in St. Louis, having delivered a cargo in St. Louis, and being in a town where the traffic is sparse, he will take a load at almost any price, just to get out of St. Louis and if the price is just enough to cover his cost, or even less, he will take it to get out. Then when he gets to a town like Chicago, Cleveland——

Mr. Diehl: Mr. Examiner, is Mr. Ratner describing a situation that occurred in the course of operation of one of his companies? If not, I move his statement be stricken from the record.

Exam. Lawton: Can't you make that specific?

Mr. Todd: I beg pardon?

Exam. Lawton: Take some particular instance.

Mr. Todd: He is describing, Mr. Examiner, his objection to the use of the trip lease operator. I think that I have qualified Mr. Ratner, as an expert in the trucking business, and I am sure that he will have no difficulty standing up on cross-examination on that score.

By Exam. Lawton:

Q. These matters that you are testifying to now, Mr. Ratner, are they based on incidents that occurred in your experience, that you have personal knowledge of, or observation of?

A. Yes sir. I have been operating trucks in and out of St. Louis for twenty years.

[fol. 2444] Q. All right. Of course, you understand on cross-examination they will ask you particulars?

A. I expect that they will, Mr. Examiner.

Exam. Lawton: Proceed.

Mr. Todd: Would you read back the last part of his statement before the objection?

(The record was read.)

A. He changes his entire attitude, knowing that at those points the common carriers and the contract carriers have an abundance of traffic and have a dire need for his type of service at particular times in the operations of different carriers, and he will pull into a parking lot or truck station and begin shopping around amongst the carriers to find out which one needs him to the extent that he would be willing to pay more than some other carrier.

By Mr. Todd:

Q. Do you find that situation to be undesirable in your particular operation?

A. Yes sir, I do, because in an operation where we have developed a balanced movement, or have developed a nearly balanced movement we try to protect our rates on the cost of doing business, and it costs us just as much to operate a truck out of St. Louis as it does out of Cleveland or Chicago. We find then that the carriers who depend upon

these owner-operators on a trip lease basis, begin to gauge their rates and their practices on what it costs them to em-
[fol. 2445] ploy these trip lease fellows and you find a chaotic condition at different points depending upon the volume of traffic and the number of trip lease operators that operate. We have found that in states where the state regulations are so stringent that the state makes it impossible to operate trip lease vehicles, that the condition is a much healthier one, the operators are more responsible, and our safety record is a better record.

Q. Is the State of Michigan one of the states that you have reference to?

A. Yes, sir, it is.

Q. And do you operate quite extensively into and out of the State of Michigan?

A. Yes, sir, we operate about 50 trucks in Michigan every day.

Q. Now, Mr. Ratner, have you ever attempted with any of these itinerant truckers to make arrangements with them to employ them on a long term basis rather than on trip leases?

A. Yes, sir, we have, and we found that it was almost impossible to get those wild catters to come in to our operation, sign up a long term lease and become an employee of ours because they felt that they had a better chance financially to take advantage of these situations that come up at different peaks in the industry from a financial gain standpoint, making more money by just high spotting around the country, and picking up loads from the carriers that needed them the most at the prices that they could bargain for and where they could secure the highest price
[fol. 2446] and with that type of operation they were not interested in aligning themselves with any one carrier on a permanent arrangement. We have had the other example, around, where fellows who we had in our employment on a long term lease would suddenly come in and show an inclination to cancel the lease and to start wild catting around the country because they felt they could make more money, and they were less regulated and had more freedom of action in this wild catting type of operation than they had when they operated under a *full* long term lease with our company.

Q. Do you believe that if the trip leasing of the itinerant trucker were prohibited by the Commission that the present itinerants would then look for employment on a permanent basis with some established carrier?

A. I think they would, yes, sir. I know that that is what happened in Michigan when trip leasing was abolished. The fellows who were wild catters or itinerant truckers immediately lined themselves up with an established carrier on a permanent arrangement.

Q. And you would prefer that situation?

A. Very definitely.

Q. Now, do you at the present time, Mr. Ratner, trip lease any of your company owned equipment to other carriers?

A. Yes, sir, we do.

Q. Are those carriers common and contract carriers, or [fol. 2447] do you limit it to just common or contract carriers?

A. No, they are both.

Q. Do you have occasion to trip lease the equipment of other authorized carriers?

A. Yes, sir, we do.

Q. And do you limit that equipment to that owned by contract carriers, or do you use the common carrier equipment, too?

A. We use both.

Q. With your experience with that type of operation do you find that that has the same objectionable features as the trip leasing of owner-operator equipment?

A. No, sir, there is a distinct and separate—will you read that question?

(The question and answer were read.)

A. Let me change my answer. I would say no, sir, it has not the objectionable features that the trip lease has.

Q. And why doesn't it, Mr. Ratner?

A. Well, first of all, in our experience we have found that when we trip leased a vehicle of another carrier, the vehicle was better maintained, the brakes and lights and identification were better, our safety record and our experience from a safety standpoint has been better; we

could depend upon the other carrier as having given that driver a physical examination; we could depend upon the other carrier to have examined the driver for his character, his responsibility, his general attitude, and to be a bet-
[fol. 2448] ter type of person than one who was an itinerant trucker or wild catter. We have found that the drivers were better trained and had a better attitude in their driving, and our experience so proved.

Q. Do you believe that the practice of trip leasing equipment between authorized carriers has the destructive economic effect that you say results from the trip leasing of the itinerant trucker?

A. No, sir, I do not. Generally, when you enter into trip leasing agreement with a motor carrier you are dealing at the top level, the management level, and you arrive at a fair and equitable cost for trip leasing services. It does not become a question of bargaining and finding yourself in a jam for a truck when you have a peak of traffic, and being at the mercy of some fellow who is only interested in that one particular load. The management of this other trucking company have an interest in continuing an arrangement, and it works both ways. There are times when they trip lease our trucks as well as when we trip lease their trucks, so it works out on a sounder, more practical, and just a better arrangement all the way around.

Q. What are the purposes that you have in mind when you either trip lease your trucks to another carrier, or trip lease the trucks of another authorized carrier to use in your operation, the elimination of dead-head mileage?

A. That is the only purpose, and sometimes to take care
[fol. 2449] of peak moves, but the principal purpose in trip leasing trucks is to eliminate empty mileage.

Q. And have you been able to accomplish that result in your operation to a certain extent by reason of trip leasing with authorized carriers?

A. Yes, sir, we have.

Q. You have referred to a situation in the State of Michigan. Do you have any arrangements in that State for the trip leasing of equipment of authorized carriers?

A. Yes, sir. In the State of Michigan the Public Service Commission have established certain rules and regulations

which authorize carriers to trip lease between themselves. They consider those as interchange arrangements of equipment. In order to be authorized to enter into an interchange arrangement between carriers for equipment in the State of Michigan you file an application, both carriers join in the application. Now, if it appears to be an involved matter, the Commission will set it for hearing. If it is a relatively simple one they will approve it without hearing. Then the permit cards, or the cab cards which the trucks carry are so mounted to show on both companies the operating rights or routes that the other company which interchanges with it can travel so if, for example, we used a truck of the G. & A. Truck Lines at White Pigeon, Michigan, and it was operating over one of the routes that the Midwest Transfer Company was authorized to serve, the in-
[fol. 2450] spector when he stopped that truck would immediately know that this is an interchange arrangement and the G. & A. truck is permitted on any route of the Midwest and vice versa.

Q. That particular operation, G. & A. is a contract carrier?

A. Yes, sir, G. & A. Trucking Company, White Pigeon, Michigan, is a contract carrier.

Q. Under the plans that you have in Michigan, do you have any similar arrangements with common carriers?

A. Yes, sir.

Q. Does the regulation in the State of Michigan make any distinction between common and contract carriers for the purpose of permitting this interchange of equipment?

A. No, sir, it is examined only from the standpoint of safety and feasibility of working. If it is a working arrangement that it can easily be worked out, they will authorize it, whether it is contract to contract, contract to common, or common to common.

Q. Now, if the Interstate Commerce Commission in its wisdom thought that it would be in the public interest to have the interstate carriers file applications for approvals of plans of that kind, would you be in favor of such a provision?

A. If they requested it, I have no objection to it.

Q. Does Midwest and Emery ever trip lease the equipment one from another?

A. Yes, sir, they do.

[fol. 2451] Q. And is that likewise done for the purpose of eliminating empty mileage?

A. Yes, sir.

Q. Is the practice followed at all, Mr. Ratner, in an effort to handle the peaks that you might have in one company as opposed to the other?

A. Yes, sir, it is.

Exam. Lawton: We will take a five-minute recess.

(A short recess was taken.)

Exam. Lawton: Come to order, gentlemen.
Proceed, Mr. Todd.

By Mr. Todd:

Q. Mr. Ratner, feeling as you do about trip leasing of itinerant truckers, would you please explain why you at the present time employ that method of operating?

A. Well, the question is one that involves fundamental principles in the operation and goes to the amount of invested capital and investment in equipment that is required in an operation, and the reason that we are using owner-operators today is to be on a parity with the other carriers in the territory that we operate, both contract and common carriers, whom we are forced to recognize as competition, and I would like to say this, that the elimination of trip leasing, and particularly these wild catters would put a burden on each motor carrier to fulfill his obligation either under contract to his shipper or his common carrier obliga-
[fol. 2452] tion to the shipping public to keep at all times an adequate amount of equipment either owned or leased, to take care of the demands of the shipping public. Now, when you do that you have periods in which the public does not use the full amount of equipment that you have available.

Q. Is that also true with respect to the contracting shippers?

A. That is true in our contract operations. All of our shippers have a fluctuation of movement depending upon their sales intensity, or the crop seasons, when the corn and tomatoes and other crops ripen, and the canning operations are seasonal, so we have a fluctuation in all of our moves, and if we were to take on the financial responsibility of buying a maximum amount of equipment to take care of the needs of our contracting shippers, or if we were to enter into long term lease agreements with owner-drivers, sufficient to satisfy the maximum amount of demands of our shippers, we would find ourselves in the slower periods with a supply of equipment that was not being utilized to its fullest extent while other carriers whom we must recognize as competition would not be in that position by virtue of using these one trip operators and they would have a decided advantage of us, over us; therefore, as long as any carrier is going to be permitted to operate with one trip lease operators then I think it becomes necessary that we protect ourselves on an equal basis and continue to use these one trip operators and when it is stopped, if it will [fol. 2453] be stopped we will be perfectly willing to purchase or arrange for long term leasing of sufficient equipment to satisfy the needs of our contracting shippers supplemented from time to time by equipment under trip leasing with other authorized motor carriers.

Q. Now, Mr. Ratner, are you familiar with the fact that under the Commission's order setting this matter down for an investigation there was a proposed rule with respect to the interchange of equipment between motor carriers?

A. That is correct. I gathered that from the notices.

Q. Are you also familiar with the fact that the Commission's proposed order would prohibit the interchange of equipment between contract carriers?

A. I gathered from the notices that the Commission sent out ~~that~~ they were of the opinion that there was no need for a contract carrier to interchange equipment with any other carrier.

Q. That is correct. Now, in the interchange of equipment, is it true that that involves at least in part the movement of a tractor and trailer over the rights of one carrier to a given point, and then the interchange of equipment at a given

point with another carrier for ultimate delivery at final destination on the rights of the second carrier?

A. Yes.

Q. Does your company at the present time have any [fol. 2454] joint arrangements with other contract carriers for effecting deliveries of that kind?

A. Yes, sir, we do.

Q. Would you please describe one of these arrangements for the record, please?

A. Now, you are talking of an arrangement where our company would originate a shipment on, to the end of our operating authority and then lease our vehicle to the other contract carrier who has the authority for the remainder of the trip.

Q. Yes.

A. We have a contract with the Kroger Grocery & Baking Company for transportation of canned foods from a number of points, among other things, in the middlewest area. The Fishback Trucking Company, another contract carrier, has a contract with Kroger for the transportation of, among other things, canned foods from the midwest area into the south. There have been times when we would operate to the end of our operating authority, and where our contract provided certain operations to be performed, and then be instructed by Kroger to deliver this shipment to the Fishback Trucking Company and act as Kroger's agent in arranging for the transportation via Fishback to the point beyond rather than interchange the shipment and unload it off of our truck on to the Fishback truck when we reached that common point where the shipment was to be interchanged we trip leased our truck to the other carrier and sent it right through to destination to eliminate the transfer. [fol. 2455] We have another example of that in the transportation of soap. We have a contract—when I say "we" I am speaking of the Emery Transportation Company, has a contract with the Colgate Palm Olive Peet Company for the transportation of soap from Jeffersonville, Indiana, to Chicago at which point Colgate employ another contract carrier to take this soap and distribute it to retail stores located in Wisconsin. The other contract carrier is the Linc[illegible]r Brothers Trucking Company. Rather than to un-

load the shipments of soap at Chicago from our trucks into Lindner's trucks we have leased Lindner our trailers and he hooks his tractor on to our trailer and goes on up into Wisconsin and distributes the soap directly off of our trailer.

We have a similar arrangement in Michigan with a carrier who distributes soap for Proctor & Gamble up in the northern part of Michigan, up in the Traverse City area. We bring the truck loads of soap to him, he hooks his tractor on to our trailer, pays us a rental for the use of our trailer and then distributes the soap directly off of our trailer, returns the trailer to us when he has finished the operation.

Q. Now, with those operations, are they a distribution service, Mr. Ratner?

A. Some are and some are not.

Q. Well, with particular reference to the soap operations are they distributions services?

[fol. 2456] A. Yes, sir.

Q. And is that distribution made direct to the retail trade, at least in some instances?

A. Yes, sir.

Q. Now, do you provide for this same shipper a similar service in interstate commerce where you have the rights out of the plant to the ultimate destination?

A. Yes, sir, where we have the entire operating authority to perform the completed service from the plant direct to the stores we perform the service ourselves. In some cases we distribute soap direct to the retail stores from the same factories that I mentioned in the testimony previous here.

Q. Now, is there any difference in the type of service performed from a physical standpoint except for the fact that there is the interchange of equipment where you perform the entire service or where you turn the traffic over to another contract carrier who affects ultimate delivery?

A. I do not understand your question. What difference is it that you ask about?

Q. Maybe if we had the question read back you would understand it.

(The question was read.)

A. You want to know if there is any physical difference?

Q. Yes, or any difference in the nature of the service that is performed for the shipper.

[fol. 2457] A. No. The goods are handled in exactly the same type of vehicle. The same type of delivery is effected and c.o.d.'s and other particulars are handled to the same degree of satisfaction whether we perform it at both ends of the operation or only one leg of it and the shipper has arranged with two contract carriers each to perform a certain part of the operation rather than to have one carrier perform it all and probably the only reason is because the one carrier does not have the complete operating authority. Now, the only purpose in our bringing this matter up here today is to point out to the Commission that in the setting up of any regulations for the leasing of vehicles that if they prohibit contract carriers from working out interchange arrangements with each other or with other carriers that it will then become necessary for us to physically transfer these loads from one vehicle to another and that by working out these leasing arrangements between carriers for the use of the trailers the goods are handled faster, probably more efficient because of the elimination of this transfer with less damage and it just works out a lot better for all parties concerned.

Q. Now, under that type of arrangement, so that the record will be clear, where you perform one part of the haul do you have a contract with the shipper?

A. Absolutely.

Q. And does the shipper pay you for that service that [fol. 2458] you perform?

A. Yes, sir, he pays us for our specific part of the operation.

Q. And does the shipper pay the other carrier or do you pay the other carrier.

A. The shipper also has a contract with the other carrier for the part of the service that he performs and they pay him for his part of the service directly. We do not enter into the arrangement between the other carrier and the shipper. The only thing that we have to do in there is to work out an arrangement with the other carrier for what is a reasonable charge for the use of our trailer for his portion of the haul.

Q. There is no question then of joint rates or anything of that kind?

A. No, sir.

Mr. Turney: I object to that. That calls for a legal conclusion, Mr. Examiner.

Mr. Todd: Well, I will change my question.

By Mr. Todd:

Q. Mr. Ratner, is there any joint effort on the part of you and the other carrier to establish a through rate on traffic?

A. No, sir.

Q. Now, do you have any arrangement similar to that one, wherein a common carrier performs any part of the transportation?

A. Yes, sir, we do. In the transportation that we perform for the Kroger Grocer Company we transport a great [fol. 2459] amount of cheese. A good part of this cheese originates at Manitowoc and Green Bay, Wisconsin. There is a common carrier located at Manitowoc, Wisconsin, named the Clipper City Transfer Company. Clipper City have an arrangement with the manufacturer of the cheese to haul all of his cheese into Chicago. Kroger buys a substantial quantity of cheese from this particular manufacturer and they permit Clipper City to bring all the cheese into Chicago for the Kroger Company as well as the other people that the manufacturer sells to. However Kroger have instructed Clipper City to deliver all the shipments of cheese moving beyond Chicago to the Emery Transportation Company at which point they give us, I say they, I mean Kroger, gives us instructions as to where to take these shipments and in what volume and at what schedules. Clipper City will bring in a load or two or sometimes 3 every day to our headquarters at Chicago. For a long time we engaged in a physical transfer of these loads of cheese. We unloaded them from the Clipper City vehicles into our vehicles. During the recent hot weather in the summer time we thought it would be more desirable for the protection of the cargo to work out some arrangement with Clipper City for the leasing of their trailers at Chicago for Emery to use for ultimate delivery of the cheese rather than

to transfer the cargo. We arrived at a reasonable arrangement with Clipper City which permits us to use their vehicle provided we give them one of our trailers that they can substitute into their fleet when we take their vehicle out. [fol. 2460] As long as there is this regular movement it works out well because they take one of our trailers back up to Manitowoc and bring another load of cheese destined for the Columbus branch, such as Cincinnati, Columbus, Pittsburgh, back to us at Chicago the next day and then we take their trailer on to these points that I mentioned as well as other points located like Detroit, St. Louis and arrange to bring the Clipper City trailers back to them within a day or two. Each one of us pays the other fellow a certain stipulated mileage rate for the use of each others trailers. It is the same rate. We pay them the same rate that they pay us. It is equitable. We think it is fair and it certainly has saved a lot of labor in transferring this cheese and it has to a great extent kept the product in a lot better state of refrigeration and caused less damage to the packages by eliminating that physical transfer of these cargoes and we would certainly like to retain those privileges in the event that the Commission enters into any regulations or prescribes any regulations governing the interchange or lease of trailers between carriers.

Q. In that instance does Kroger pay you for the service that you perform?

A. Yes, sir, they do.

Q. And does it likewise pay the common carrier for the service that it performs?

A. Yes, sir.

[fol. 2461] Q. Is that movement that you have just described a straight truckload movement or are there any peddler runs involved in it?

A. They are mostly straight truckloads. There are some split deliveries where they have a truck load going out of Chicago a particular type of cheese that does not sell in big quantities like Liederkranz or cheese of that kind. They will drop off three or four branches like Louisville, Indianapolis, Cincinnati, Columbus but generally straight truckloads.

Q. Do you haul any other cheese out of Chicago for

Kroger other than this traffic that is brought in by Clipper City?

A. Very definitely. We haul a substantial quantity which originates in Chicago such as manufactured in Chicago.

Q. Is that traffic handled for Kroger into its branches, too?

A. In exactly the same manner as the other traffic.

Q. There is no difference in the service when you pick it up in Chicago, manufactured there, or whether Clipper City brings it in to you from up in Wisconsin?

A. No difference in our handling, no difference in the service we give Kroger.

Mr. Todd: You may inquire.

Cross-Examination

By Mr. Diehl:

Q. Mr. Ratner, how many contracts does your company have?

Mr. Todd: Objection, Mr. Examiner. We are not going [fol. 2462-2463] to get into the status of Midwest and Emery in this case. We have had a long drawn out proceeding on that. Mr. Ratner here is to testify in the hopes of helping the Commission in a general investigation case on leasing. Anything that has been covered on direct or concerns that subject, we have no objection to answering, but I am not going to submit this witness to a lot of cross-examination concerning the status of his company. In fact, Mr. Examiner, I will withdraw him from the witness stand.

Mr. Diehl: I have no concern with the status of his company.

Exam. Lawton: Do you happen to know the number of contracts?

Mr. Diehl: I have heard him state it in other proceedings.

Exam. Lawton: It is not material to this case.

Mr. Diehl: Only as a preliminary question to the next question. I am going to determine, not the status of the two companies which he owns, I know what the status is. I have no concern with them.

Exam. Lawton: On that understanding, I will permit the question.

By Mr. Diehl:

Q. Will you answer the question, please? Approximately.

A. I don't remember the question.

Q. How many contracts does your company have?

[fol. 2464] A. We have two trucking companies, Mr. Diehl, and I have testified here about operations in both companies. The Midwest Transfer Company have approximately 20 contracts, the Emery Transportation Company have about 30.

By Mr. Diehl:

Q. Are all those contracts on file with the Interstate Commerce Commission?

A. Yes, sir.

Q. Are those bilateral contracts in which the shipper guarantees the contract carrier a minimum amount of traffic?

A. Yes.

Mr. Idol: Mr. Examiner, I am going to join in the objection to proceeding any further along this line. It is absolutely immaterial.

Exam. Lawton: Sustained.

Mr. Diehl: I think it will appear from my other questions, [fol. 2465] it will appear directly in sequence and in order, but I can skip over that.

By Mr. Diehl:

Q. Have the operations of your companies been profitable?

A. Yes, sir.

Q. Did you testify on direct that something like ten percent of your business was handled on trip lease operations?

A. Yes, sir.

Q. Would your business be profitable if you did not use trip lease operations?

A. Yes, sir.

Q. Since the bilateral contracts which your companies have guarantee your companies a certain amount of traffic, is it any concern to your company, or are your two com-

panies concerned with competition of common carriers or anybody else under that type of contract?

A. We very definitely are. These contracts each have a maturing date, and they can be cancelled upon reasonable notice.

Q. What is the cancellation notice of the average contract?

A. It varies in different contracts. I don't know offhand.

Q. Is it in any instance less than 30 days?

A. No.

Q. Do those contracts which you have on file with the Interstate Commerce Commission contain a provision that will allow a renegotiation with your shipper depending upon rising or falling costs to you, the operator?

[fol. 2466] A. Every single one does.

Q. Does?

A. Yes, sir.

Q. So that in that case then you are not as vitally affected with the cost of operation as the average common carrier who handles traffic for everybody, he has no such guarantee, is that right?

A. I think we have a more direct effect by change in costs than the common carrier does.

Q. And you also have a method of protecting yourself in your contracts under those circumstances, is that right?

A. Our shippers will pay us rates that will guarantee us profitable operation so long as they continue to use our services, but if our charges become too high they will either turn the business over to other carriers or they will buy their own trucks.

Q. We all realize that. I think the ceiling on any motor carrier rate level is the cost of private operation, Mr. Ratner.

A. No, not necessarily.

Q. The point I am trying to make is your company or your two companies which are contract carriers, having bilateral contracts with guaranteed shipments and a guaranteed profit on such as you do handle, are not as vitally concerned with the cost of operation as the average common [fol. 2467] carrier operating in the same general area.

[fol. 2468] Mr. Diehl: I will be glad to reframe the question, Mr. Examiner.

By Mr. Diehl:

Q. Mr. Ratner, will you please, in explanation of your answer to the effect that your company was more concerned and more vitally affected by the cost of operation than the common carriers in the same territory in which you operate, will you please explain that?

A. As I pointed out on direct questioning the common carriers will permit their rates to be governed by the use of the one trip operator. At St. Louis where they use these one trip operators extensively and are able to hire them at a lower basis than they do at Cleveland, Ohio, they have a lower basis of rates in effect.

Q. Is that your explanation, sir?

A. That is correct.

Q. Does that conclude it?

A. Well, I just wanted to point out it costs us the same amount to operate a truck at either St. Louis or Cleveland, so we have a definite interest in the relationship of what it costs a common carrier to operate his trucks and where they use one trip operators we have known it to be a fact that their rates are lower because they pay these one trip operators lower.

Q. Is the common carrier level of rates in the territory in which you operate higher or lower than your schedule [fol. 2469] as a contract carrier?

A. In some cases it is higher and in some cases it is lower.

Q. In how many cases is your schedule higher?

A. I was not finished.

Q. I am sorry.

A. On the average in the overall picture I would say that they are probably about the same. There may be variations but our rates are generally the same as the rail, the common carrier rates for similar services. There are lower ones and higher ones. They will average out.

Q. When I spoke of common carriers I meant to exclude the railroads.

Exam. Lawton: You mean motor common carriers?

Mr. Diehl: Yes, sir.

By Mr. Diehl:

Q. In how many instances do your schedules, your contract schedules exceed the motor common carrier level of rates in the territories in which you operate?

A. Well, it depends upon the services.

Q. As reflected by the tariff bureau rates, that is what I mean by the level of rates, not the individual carrier, of course.

Mr. Todd: Mr. Examiner, I do not think the question is proper if it is limited to bureau rates. There are other common carriers and he has to be guided according to all of them.

By Mr. Diehl:

Q. I will ask him then to answer me only with respect [fol. 2470] to the Bureau rates.

A. I do not know what the Bureau rates are and we certainly do not prepare our rates from the Bureau tariffs or from any common carrier tariffs. We arrive at our cost of operation and at a point like St. Louis, Missouri, where the common carriers maintain a low level of rates we find that our rates are higher than the common carrier rates. At a point like Cleveland where the common carriers maintain a high level of rates because there is an abundance of traffic we find that our rates are sometimes lower than the common carrier rates.

Q. Mr. Ratner, are you telling me that you do not know what the Bureau rates for common carriers are in the territories in which you operate?

A. Absolutely not. I do not know.

Q. Now, Mr. Ratner, in the course of your direct examination you described the preparation for the use of a trip lease operator, and you used the words "casual examination" and "hasty examination" of the equipment. Were you describing the method that your two companies use in inspecting the equipment which it uses on a trip lease basis?

A. Yes, sir, I was.

Q. And that is the practice of your two companies?

A. That is right. As well as other companies in the territory.

Q. Beg pardon?

A. As well as other motor carriers in the territory.

[fol. 2471] Q. You know something about the practices of the other carriers in the territory, do you?

A. A little.

Q. But you do not know about the Bureau rates.

Mr. Woll: He has answered that already. He said he did not.

Mr. Diehl: I heard him, sir.

By Mr. Diehl:

Q. Isn't it the practice of your companies to make rather careful examination of its company owned equipment or its owner-operator long term lease equipment before it goes on the road?

A. Those are done at regular inspection places and they are done very carefully and very thoroughly on a regular schedule and we even go so far as keep records on when their transmissions were greased and the rear ends and when the wheel bearings were greased and wheels removed and brake linings examined and all those inside mechanical operations of a vehicle that are not apparent by an outside examination of a vehicle.

By Exam. Lawton:

Q. On that point, do you service and maintain your equipment in your own shops or garage?

A. Yes, sir, we have our own shops and garages for maintaining our equipment, and we have also made arrangements in outside territories for that work to be done by outside garages. We use both types and we maintain and service the equipment of our long term operators owner-drivers who work in our fleet under long term leases but we do not do that for trip lease operators one trip operators.

[fol. 2472] By Mr. Diehl:

Q. Do you think your company is complying with the existing Interstate Commerce Commission regulations if it does not make the inspection which I have referred to?

A. We are complying with the Interstate Commerce Commission regulations to the best of our ability and with

owner-operators I said in my opening remarks it would be impractical.

Q. Mr. Ratner, that is not responsive to my question. I ask you again, it may be answered yes or no.

Mr. Todd: It may be answered yes or no and he is explaining his answer.

Mr. Diehl: I submit he did not say yes or no.

By Exam. Lawton:

Q. Will you answer the question?

A. I will answer the question yes with the following explanation.

Exam. Lawton: All right.

By Mr. Diehl:

Q. You mean yes, you are complying with the Interstate Commerce Commission requirements even though you employ a trip lease operator and make only a casual, hasty examination that you described in your direct testimony?

By Mr. Todd:

Q. Mr. Ratner, before you answer that question, finish your explanation of your previous question as you started out to do before you were interrupted.

Mr. Diehl: He was interrupted to give an answer to the question, Mr. Todd.

[fol. 2473] Mr. Todd: Mr. Examiner, he answered twice, yes.

Exam. Lawton: Go ahead and explain.

A. It is our desire at all times to comply with all the rules and regulations of the Interstate Commerce Commission and to the best of our ability we do that.

By Exam. Lawton:

Q. With respect to——

A. To the inspection of equipment, the physical examination of drivers and the examination of the drivers log previous to the time that he came in to trip lease for your com-

pany or for our company. As I said before it is impossible and impractical do that thoroughly and properly for these one trip operators and we do it to the best of our ability. The cost of administration and setting up and good handling for one trip operator examination of equipment physical examination and log sheets would be impractical.

Q. I gather then that these one trip operators are engaged on the spur of the moment so to speak, is that correct?

A. In our territory, Mr. Examiner, it is done by a bargaining process. These fellows call up every truck line in town to find out if they need any of them. Then they ask you how much will you pay, and how much does the load *weight*, and "do I have to load it or unload it," and all those things and it sometimes takes a half a day to engage one of these fellows by negotiation.

Q. I mean that when one calls up and starts to negotiate, [fol. 2474] you would not engage him unless you had an emergency movement, unless you had something; am I correct?

A. That is correct. You had an over abundance of traffic moving in a particular day or particular area.

Q. The point of my questioning was you would not have the time under those circumstances to make the check which you say you make of your drivers?

A. Well, it is more than that, Mr. Examiner. I think it deserves an explanation. At some points in our operation all we have is one man who supervises dispatching of the equipment and the drivers. That man has not been a trained mechanic. He has no knowledge of air brakes or mechanical operation of trucks. The examination of tires would be almost a layman's examination. He could not tell if a tire had a bruise in it that was dangerous and in order to set up men at these points where we engage these trip lease operators who are thoroughly qualified to make a good examination of the vehicle and to arrange for physical examination of the driver and to examine his logs it would mean putting two or three men at each one of our branches where we have one man to supervise operation. But we have for our own trucks regular places where we do this and we

channel our trucks and our long term lease operators through those places to have it done regularly and properly.

Exam. Lawton: I did not mean to take the examination away from you, Mr. Diehl:

[fol. 2475] By Mr. Diehl:

Q. Mr. Ratner, how many places in your operations do you trip lease units, at how many points in your system do you trip lease units?

A. As I told you before, Mr. Diehl, the Emery Transportation Company operates from the Atlantic seaboard clear up into Minnesota and west into the states of Iowa and Missouri. We haul a great number of canned goods and crops that originate at fields and packing houses located throughout that entire territory. It would involve hundreds and hundreds of places where trucks are loaded.

Q. Do you mean that you trip lease units at hundreds of places at this time?

A. No, we do not.

Q. Well, I asked you at how many points on your system do you trip lease units?

A. At different times in our operation it happens at hundreds of places.

Q. Let's just take the past month. I don't want to seem to be unreasonable about this.

A. In the past month we may not have trip leased any vehicles. We may have trip leased them at only five or six places. But throughout the period of years we will have trip leased operators at hundreds of places in our operation.

Q. Can you be a little bit more specific about the last month, if you know? You are familiar with these operations pretty much, aren't you?

[fol. 2476] A. Yes, sir.

Q. Can you give me some idea at what points during the past month did your companies trip lease units?

A. At St. Louis, Missouri; at Cincinnati, Ohio; at Lancaster, Ohio; at Canojoharie, New York.

Q. What was the name of that last?

Exam. Lawton: Canojoharie.

By Mr. Diehl:

Q. Is that your recollection on it?

A. That is some.

Q. Now, at how many of these points does your company maintain a terminal?

A. I don't know what you mean by a terminal, Mr. Diehl?

Q. What do you have at St. Louis, Missouri?

A. At St. Louis, Missouri, we have a branch office. We have two men engaged at the branch office whose function and responsibility it is to dispatch the trucks that we use in our St. Louis operation.

Q. What do you have at Cincinnati?

A. At Cincinnati we have a branch office with four men at that point.

Q. Excuse me. Go ahead.

A. At that point, we are a little better set up to make these examinations that we talked about.

Q. Now, at each of the points you mentioned you have [fol. 2477] at least a man responsible for dispatching units, do you not?

A. That is correct.

Q. And whether he dispatches a company owned or long term lease or a trip lease unit is it not his responsibility to see that the unit is in good order before it goes on to the road?

A. On the company owned vehicles and long term vehicles, we do not ask him to take that responsibility. Unless the driver were to point out to him that the vehicle needed some repairs the subject would have never come up.

By Exam. Lawton:

Q. Where is it you have your shops and garage?

A. Our principal shops and garage at Chicago, Illinois, Monroe, Michigan, and Cincinnati, Ohio.

By Mr. Diehl:

Q. Can you tell me any states other than Michigan in which you operate that have restrictions such as you describe with respect to that state, if you know?

A. I do not know of any others.

Q. What is the southernmost point that any of your companies serve?

A. Nashville, Tennessee.

Q. I believe you said you go to the Atlantic seaboard. Do you mean New York City?

A. New York, Philadelphia, between Philadelphia and up into New York.

Q. How far west do you go?

[fol. 2478] A. The entire states of Minnesota, Iowa and Missouri.

Q. Do you have any terminals in the State of Minnesota, I mean shops or garages in the State of Minnesota?

A. No, sir. We have a branch office at Minneapolis.

Q. Do you have any shops or garages in Iowa?

A. No, sir.

Q. Do you have any shops other than at points you told the Examiner a few minutes ago?

A. No, sir, no, sir, not our own shops.

Q. That is what I mean.

A. We have arrangements for repairs.

Q. And I believe you said on direct examination that if the Commission should issue a rule prohibiting trip leasing that you would be ready and willing to purchase such equipment as your shippers may require, to meet any demands that they might make upon you, is that right?

A. I said that we would take upon ourselves the obligation to purchase or arrange for long term lease of all the equipment necessary to perform our contract obligations to these shippers.

Q. How long do you consider a long term lease?

A. At least one year.

Q. A calendar year, at least, is that right, a full year?

A. That is right. If a man hired out to you on July, under a long term lease I would expect him to work until next July, to keep his vehicle leased to you that long.

[fol. 2479] Q. Did you not tell the Examiner that there was certain fluctuation upon the traffic depending upon the canning season, and so forth?

A. That is correct.

Q. And if you lease on a long term basis do I understand you mean you are going to pay for that unit whether it operates or not during the term of the lease?

A. Well, that would depend upon the terms of the lease, if you lease it,——

Q. Let me ask you this, is it your practice to compensate the owner-operator whom you have on what you call a long term lease on a percentage of revenue?

A. Are you asking me a question?

Q. I thought I did.

A. I didn't hear it. Would you read it?

(The question was read.)

A. In some cases we do and in some cases it is on a mileage basis, and in some cases it is on a daily rental for the equipment.

Q. In each of the instances you have described do you guarantee the owner-operator that you say you have on a long term lease a minimum return whether his equipment is used or not?

A. Only in those cases where we lease vehicles on a daily, weekly or monthly basis do we guarantee any payment whether the vehicle is used or not. When we lease it on a [fol. 2480] mileage basis or on percentage of revenue basis naturally if the vehicle is not used the owner receives no compensation for his vehicle.

Q. How about the movement in empty miles of a unit that you are not paying for by the day or by the week such as you have just described, do you pay him for that?

A. Oh, yes, very definitely. If he is paid on a mileage basis he gets paid both ways loaded and empty. If he is paid on a percentage of the revenue the revenue was derived at by contemplating a certain portion of empty miles and the loaded miles and arriving at the revenue and he gets his percentage of that which comes from a percentage of empty and loaded miles.

Q. Now, Mr. Ratner, if he hauled a load one way for you you would pay him a specific amount, is that correct, a percentage of the revenue?

A. Which operator are you talking about?

Q. I am talking about an operator, owner-operator that you have on long term agreement that you are compensating on the basis of a portion of the revenue derived as his compensation.

A. Are you talking about the use of his equipment, not for his salary? His salary is computed on mileage basis, the same as company drivers are. He is treated as an employee in every respect just as any employee. For the use of his equipment he may receive a percentage of the revenue. Do you want to know if we pay him specifically for empty miles?

Q. Yes.

[fol. 2481] A. No. It is all billed into the one rate and he has his percentage of that rate, and there is contemplated in that rate certain empty mileages.

Q. But if he hauled a pay load in both directions, would he?

A. He would have a bonanza or whatever you call it, that day. He would get paid for both ways contemplated empty mileage in both rates in which there were no empty mileage and he would have this windfall.

Q. And your company could afford to pay that and still not lose money because of the provision in the contract with the shipper which guarantees your profit, is that correct?

A. I don't like to have you put it that way.

Mr. Woll: Mr. Examiner, haven't we gone into this before?

Exam. Lawton: I think we have.

Mr. Diehl: I think you are right. I think I am about through, Mr. Examiner. Thank you, Mr. Ratner.

By Mr. Turney:

Q. Mr. Ratner, I may have missed it. I understand that the Emery Company contracts deal with grocery products generally?

A. That is correct.

Q. What is the situation with respect to Midwest?

A. Those are building materials; roofing and building materials, sewer tile, fence wire.

Q. I was particularly interested in the argument between you and Mr. Diehl with regard to the relationship between [fol. 2482] your rates and those of the Bureau rates, such as Central States Motor Freight Bureau; you are familiar with that Bureau, are you not?

A. I am glad you put that up that way. I did not come

here to argue with Mr. Diehl. I only came here to lend what I could to this proceeding investigating leasing practices. I am not familiar too much with any Bureaus.

Q. I was just asking you if you know of the Central States Motor Freight Bureau.

A. I know that there exists such a Bureau, yes, sir.

Q. And that they publish rates for a large number of common carriers in a substantial portion of your area, is that right?

A. I do not know what they do. I haven't the least idea.

Q. Do you mean you don't know that?

Exam. Lawton: That is what he says.

By Mr. Turney:

Q. Did you really mean that, Mr. Ratner?

A. The only contact I have ever had with the Central States Motor Freight Bureau when they attack some schedule of minimum charges we may file and say it is unjust and unfair and detrimental to the public interest and every thing else.

Q. On the ground they are too low?

A. Too low, or it was different than theirs, or they didn't like it. I don't know what grounds they had, but they had a lot of ways. I think it is headed up by Chester Moore, that is all I know about it.

Q. Do you know of any instances where they attacked [fol. 2483] your rates where they were not lower than the Bureau rates?

A. They have filed several complaints against our rates and asked them to be suspended when we filed them, and in some cases they were mistaken. They didn't even check out their own rates properly and our attorneys were able to point that out to the Commission and they withdrew their suspension request.

Q. My question was whether there were any that you know of, any instances where they claimed that they attacked your rates and the rates that they attacked were equal to or higher than the corresponding Bureau rates?

A. That is the ones I just told you about.

Exam. Lawton: Certainly a common carrier is not going to attack a contract carrier's rates because the contract carrier's rates are higher.

Mr. Turney: That is exactly what I was getting at. I wanted to see if he would admit that.

By Mr. Turney:

Q. Now, is the situation pretty much the same with respect to the eastern Central Motor Carriers Association?

A. They have never requested any suspension on any of our rates. I don't know who they are or what they do.

Q. How about the Middlewest Motor Freight Bureau?

A. Oh, Yes.

Q. Your answer is to be the same with respect to Central States?

A. Well, I know that there exists such a bureau. I know [fol. 2484] that Central States owns that Bureau, or runs it, and their policies are exactly the same as Central States.

Exam. Lawton: Aren't we going far afield with this?

Mr. Turney: Those were all preliminary to the question now.

By Mr. Turney:

Q. Mr. Ratner, your testimony might be subject to this implication, and I want to get it direct on the record: Is it your sworn testimony here that in fixing your contract carrier rates for a specific commodity with respect to a contract with a specific shipper, you do not familiarize yourself with or consider the competitive rates of the other common carriers in your territory; is that your testimony?

A. That is exactly right. We do not do that first. That is sometimes pointed out to us.

Exam. Lawton: Wait. You have answered the question. Don't go any further, if that is your answer that you do not pay any attention to the common carrier rates in fixing your charges.

A. But it was a long question and it had several points to it, and I think it deserves more than a yes or no answer.

Exam. Lawton: Go ahead.

A. And I said that we do not take the common carrier rates into consideration when we arrive at our charges, but that at times it is pointed out to us by our shippers the variance between our rates and the common carrier rates, whether they are higher or lower, and to that extent we become familiar with the fact that in some territories our rates are higher than common carriers and in other terri-
[fol. 2485] tories lower.

By Exam. Lawton:

Q. But it was because the shipper told you and not because you went and searched the tariff.

A. That is exactly right.

By Mr. Turney:

Q. So that the only ones you would hear about from the shipper would be those where you were higher, is that correct?

A. No.

Q. He would not complain if those were lower?

A. He don't complain about them, even when they are higher, but we meet with these shippers daily and talk to them and these things come up, not in the nature of a complaint.

Q. Mr. Ratner, let's go to another subject. I believe the interline arrangements that you spoke about related entirely to Emery, is that correct?

A. That is correct.

Q. Is that Middlewest or Midwest?

A. Midwest Transfer Company.

Q. Midwest Transfer Company. Now, does that company engage in any similar arrangements?

A. I do not recall any right off hand.

Q. You don't know whether they do or not, or is it your testimony that they do not?

A. They may have entered in to similar arrangements sometime past, but I do not recall it, and I would not want to say that they do not.

[fol. 2486] Q. Now, did you recite all of the instances where you have such interline arrangements with other contract carriers?

A. I think so.

Q. The two soap contractors and the one—the first, Kroger contract, were the only ones, is that correct?

A. That is correct.

Q. The other contract carriers, now, what other instances are there of interline arrangements between your company and common carriers?

A. What is your name?

Mr. LaTourette: Turney.

A. I was not here when these fellows entered their appearances. Mr. Turney, I did not call these interline arrangements. These are, what I describe as interchange equipment arrangements, and I wanted to be sure that the Commission in prescribing the rules and regulations, preserved those privileges for us. We do not contend that there are any interline arrangements in the sense that common carriers interline traffic with one another.

Mr. Turney: Mr. Examiner, I ask that that be stricken. Every question you asked this witness he gives you a speech on another point. That was a simple question. He knew there were instances I referred to, and I submit he should answer the questions.

Exam. Lawton: Motion denied.

[fol. 2487] By Mr. Turney:

Q. Now, will you please answer the question, Mr. Ratner? The question was, was the Kroger cheese arrangement from Manitowoc the only interline arrangement you have with common carriers?

A. I would like to say, Mr. Turney, we do not have any interline arrangements as such with any common carriers. I explained that to you. You seemed to take offense at my explanation and call it a speech. I am only trying to answer your questions.

Q. That is not apparent, Mr. Ratner.

By Exam. Lawton:

Q. Is that your interchange?

A. We interchange the equipment.

Q. But the commodity stayed on the equipment?

A. That is right, on the trailer. We do not interchange the tractors. We took this trailer from the other carrier, we paid him a rental for it. We effected the ultimate delivery on it.

By Mr. Turney:

Q. And you interchange the shipments, didn't you?

A. What is that?

Q. You interchanged the shipment.

A. As far as we are concerned, we do not call it that.

Q. Do you do it, do you give it to the other carrier?

Exam. Lawton: He so testified, it stayed on the trailer and was taken over by the other carrier, be he common or contract.

A. No, we took it over from him.

[fol. 2488] By Exam. Lawton:

Q. You took it over from him?

A. That is right.

By Mr. Turney:

Q. Now, is the Kroger cheese arrangement the only one that either of your companies have with common carriers?

A. No, we have some other arrangements on frozen foods in New York City. I do not remember the name of the common carrier because the shipper has arranged generally as to which common carrier will take the shipments beyond.

Q. Where are the movements on your line there?

A. They are from points in Illinois or Indiana into New York City, or into Brooklyn on our line.

Q. For movement where?

A. To Hoboken, New Jersey, or Jersey City across the river. The shipper has arranged it.

Q. What is the name of the shipper?

A. Bird's Eye, Snider and Standard Brands.

Q. Is that three?

A. Two.

Q. Two, Bird's Eye, Snider?

A. Bird's Eye Snider, one; Standard the other.

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record.

By Mr. Turney:

Q. Is that the only such arrangement you have with a [fol. 2489] common carrier?

A. That is all I can recall at this time, yes, sir.

Q. Now, you stated that you got the Clipper City vehicle back to them the next day at Chicago?

A. I said the next day or two.

Q. The next day or two. Now, did you get it back to them empty or in service?

A. Sometimes it would be empty and sometimes it would be loaded. We had the privilege of loading it back if we wanted to.

Q. Now, for whom were those loaded return shipments hauled?

A. Do you mean for what shipper?

Q. Yes, sir.

A. It would be hard to say.

Mr. Todd: I will object to the question as far as a particular shipper is concerned. If Mr. Turney wants to ask whether it was one of the companies contracting shippers, I think it was proper.

By Mr. Turney:

Q. I think I got the question I wanted. It might be any one of your contracting shippers.

A. Depending on the territory in which the shipment went to, if it came to St. Louis it would be one of our shippers, St. Louis, or return empty from St. Louis. If it went to Pittsburgh it might be H. J. Heinz Company, Pittsburgh; it may be returned empty part way.

Q. On that return movement, it might be any one of your [fol. 2490] contracting shippers who had a movement going into Chicago from that point at that time?

A. That is correct.

Q. And your companies operations, both companies, are balanced movements in all directions?

A. Absolutely not.

Q. I understood your testimony to be that they were, I was rather startled in view of your broad territory; to what extent are your operations balanced?

A. Well, that is very seasonal. At times it is balanced almost 100 percent, other times it may be 50 percent; depends on the season of the year, the amount of crop and sales conditions of our shippers. The average over-all for last year was about, I think 70 or 80 percent loaded miles and 20 or 30 percent empty miles.

Q. Now, the seasonal variation will affect Emery considerably more than they would Midwest, is that correct?

A. That is correct.

Q. Now, what is the situation with regard to balance on Midwest?

A. I spoke about the over-all for both companies.

Q. Well, can you be more specific as to Midwest?

A. It is the same, 70 or 80 percent mileage loaded, 20 or 30 empty.

Q. That is the annual basis?

[fol. 2491] A. That is right.

Q. Without seasonal fluctuations which you have in your company?

A. That is right.

Q. Now, is it your idea with respect to the Emery Company that if these trip leases are abolished that you will maintain a fleet of vehicles the year around sufficient to handle the good seasons business?

A. That is correct, to be supplemented from time to time by equipment leased from other authorized carriers.

Q. And those are not necessarily authorized carriers engaged in the same business that you are?

A. They are not necessarily engaged in any particular type of business as long as they are authorized carriers.

Q. And it would not be likely at all that you would attempt to obtain equipment from carriers engaged in transportation of perishables of the type you are because their season would be the same as yours?

A. That is generally true, except some times you have cross movements, one commodity moves one direction, the

other commoditiy moves the other. It may be they both rotate their crops to mature at the same time.

Mr. Turney: That is all.

By Mr. Nisbet:

Q. Mr. Ratner, do your companies engage in the practice of leasing equipment to private carriers or shippers?
[fol. 2492] A. No, sir.

Mr. Nisbet: That is all I have.
Mr. LaTourette: I have one or two questions.

By Mr. LaTourette:

Q. I do not think the record is entirely clear, Mr. Ratner, as to these term leases with respect to the period of time they cover. Are they all uniform as to periods, or do you have term leases that vary as to periods?

A. They are in our operation all set up to run for a minimum of one year cancellable on 30 or 60 days notice depending upon the specialization of the equipment, some are 30, some 60. They automatically renew themselves.

Q. You mentioned the varying methods of compensation paid under the term leases. I think you mentioned some percentage of revenue, some mileage and some based upon the period of time of use. The Interstate Commerce Commission in Rule 2, subparagraph C, propose that compensation for use of equipment shall be computed on a use, and then the following words are in parentheses such as a time or mileage basis. Do you see any objection to a requirement that leases for vehicles, that the compensation be based upon those factors, either time or mileage?

A. No, that would not be objectionable.

Q. The rule further provides a prohibition against payment for use based on revenue earned by the equipment. Do you see any objection to a prohibition of that kind?

A. Well, I think that any mileage figure should provide [fol. 2493] a sliding scale for amount of tons hauled. If you got 12 cents a mile for hauling 10 tons, you should get 15 or 20 cents a mile for hauling 15 tons; and so forth. The use factor, and the amount of revenue or load haul should

be sliding enough to provide some equitable basis for payment to a long term operator.

Exam. Lawton: Didn't you mean, Mr. LaTourette, division of the charges received?

Mr. LaTourette: That is right.

By Mr. LaTourette:

Q. I mean this, Mr. Ratner, do you see any objection to a prohibition against payment of lease rental based on 70 percent of the revenue earned on the traffic, to illustrate?

A. I do not think a prohibition of that kind would help the situation any.

By Exam. Lawton:

Q. You would object to it whether it would help it or not?

A. I would object to it, I think that the purpose of prohibiting that go beyond correcting the evils and abuses of leasing. I do not see where the use of a percentage figure on revenue has any bearing on the purpose of this investigation.

By Mr. LaTourette:

Q. You take that position, do you, because you do not think the formula for payment of compensation when a vehicle is used has any relation to the safety program of the Commission?

A. To the safety or to the responsibility or to the physi- [fol. 2494] cal examination of the equipment or the driver. In the rate that any carrier develops he develops the use factor and the empty miles and loaded miles, and all those things are taken into consideration when he fixes his rates.

Q. Now, coming back to the point.

A. I had not finished. I would like to complete it.

Q. Pardon me.

A. When he gives his owner-driver a percentage of the rates he is naturally being paid for empty miles, for unearned use, time, and for all the factors in the operation.

Q. Now, speaking purely from the standpoint whether you find objection to a prohibition against percentage of revenue, is the objection based solely on the fact that the

method of compensation does not in any manner relate to safety of operations, or are there other factors or objections that you see to such a formula?

A. My objection to the one trip lease operator was that you did not get a chance to investigate his character, his responsibility, his equipment or his physical condition.

Exam. Lawton: You have already stated that.

Mr. LaTourette: I want to find out——

The Witness: I want to give you your answer. I was almost finished. I said that the percentage of ratio of revenue paid has no bearing on these things, and you are not going to correct them whether you pay this man on a [fol. 2495] percentage of mileage or hourly rate; those other things would be corrected by long term leases with the proper regulations.

By Mr. LaTourette:

Q. I think we are in agreement on that. Now, I am asking the question and seeking to develop this from you and only by way of information, is your objection to a prohibition against percentage of revenue arrangements based solely upon the fact that it is not material to the safety of operations, or is there any other objection that you have to a lease providing for payment of lease rental based upon percentage of revenue on the traffic?

A. Now, you confuse the question.

Q. No, I have not.

Exam. Lawton: It is a simple question. Read the question.

(The question was read.)

A. I did not want to give you the impression that I had any objection to a percentage of basis of revenue.

Mr. LaTourette: I am speaking of a prohibition against.

Exam. Lawton: Prohibiting, that is what you are talking about?

By Mr. LaTourette:

Q. I am speaking of a prohibition against percentage of revenue.

A. I have an objection to the Interstate Commerce Commission installing a prohibition on that because I think the percentage of revenue is immaterial to the issues.

Q. Now, I am seeking to develop from you, you have said [fol. 2496] that that is one of your objections. Are there any other objections you have in mind to a prohibition that the Commission seeks to fix here against payment of lease rental based upon percentage of revenue earned on a particular shipment transported?

A. I have an objection to any regulations that are unnecessary and in my opinion that is an unnecessary regulation, and consequently there is no point putting it in. It is just a general situation.

By Exam. Lawton:

Q. In a sense you class that as an unwarranted interference in the right of private contract.

A. That is right.

Q. Of course, you understand that contracts that conflict with public policy are void and the Commission can make regulations that do interfere with the right of contract?

A. I understand, and I am only trying to give the Commission my opinion.

By Mr. LaTourette:

Q. In the case where there has been interchange of equipment as between either one of your companies and either a contract or common carrier, does the interchange relate only to the interchange of the trailer?

A. That is correct. No, in the first instance that I cited of the canned goods moving into the south, we trip leased our vehicle to the other carrier, both tractor and trailer.

Q. Now, Mr. Ratner, would you give me the name of that company, I do not recall it, who would be the lessee of the vehicle?

[fol. 2497] A. Fishback Trucking Company.

Q. In that situation your tractor and trailer go to the Fishback Company?

A. That is correct.

Q. Does your driver go with the tractor or does Fishback put on his own driver?

A. Our driver went right through with the tractor and trailer, and they did not make a separate check, or they do not make a separate check for his salary. They pay us a flat rental for the use of the vehicle on that trip.

Q. And that driver's wages, your company would pay the Social Security taxes and make the income tax withholding, and so on?

A. That is correct.

Q. And would he appear on the payroll—he would under no circumstances appear on the payroll of Fishback Trucking Company?

A. In the lease of equipment between carriers our company——

Q. I am only speaking about this one situation now, this Fishback situation.

A. That is right. You were right, our company paid his salary and Social Security taxes, and not the Fishback Company. I wanted to go on and say we do that in all cases between carriers; in all cases between carriers we furnish the truck and driver, or we receive the truck and driver where we do any trip leasing between carriers.

[fol. 2498] Q. Now, is it your view that if there are rules promulgated respecting the interchange of equipment between authorized carriers, that those rules shall contemplate the payment of the drivers wages by the lessor of the vehicle, and that the driver of the lessor should be permitted to go through on the trip?

A. Well, there again, I do not think that the Commission could, any regulation can improve or help the situation. I think any regulation on the interchange or the leasing of equipment between regulated carriers is unnecessary and that if the carriers desire to transfer the driver from one payroll to another or substitute drivers, or send them right through, that should be their privilege and prerogative.

Q. Then, your position is that the Commission should not make any regulation which would affect the freedom of carriers, authorized carriers, in arranging for interchange of equipment?

A. That is correct.

Q. Do you think that the failure of a lessee to have its

driver on a vehicle while it is performing service of the lessee in any manner raises the question of proper control of the operation by the lessee?

A. No; sir, I think the lessor is just as qualified to properly control his vehicle as the lessee, if they are both authorized carriers.

Q. I am assuming now the vehicle is operating under lease, and it is on the route of the lessee, but the power [fol. 2499] unit is driven by the driver who is in the employ of the lessor. Do I make that clear?

A. I thought you were talking about control from St. Louis standpoint.

Q. Well, any standpoint.

A. From the regulatory standpoint, I think that the driver will properly understand under whose certificates and routes he is operating and that no regulation is necessary. That can be worked out between the carriers.

Q. This arrangement in Michigan which appears to be flexible for the interchange of equipment as between carriers, does the State Law provide that only one tax need be paid on a vehicle, and that so far as its license and the tax paid by the lessor, it may be used under some sort of alternate card provision by the lessee, if you know?

A. Michigan has full reciprocity with States in the adjoining area, and the only taxes that they charge for trucks operated through Michigan are those that are licensed, are those taxed on trucks licensed in Michigan. In most of our arrangements they have all been on a reciprocity basis with no tax involved, but there have been some taxes involved with G. & A. Truck Line. I am not sure just how they were handled, but in any way, I am sure it was a single tax, possibly no tax at all.

Q. In other words, the interchange of equipment arrangement as contemplated by the Michigan regulation statute [fol. 2500] does not require any extra tax burden to be assumed by the lessee.

A. That is correct.

Mr. LaTourette: That is all.

By Mr. Tobin:

Q. Does it ever happen, Mr. Ratner, when you are approached by one of your wild-cat operators looking for work from your company, that when you mention the physical examination he loses interest in working for your company?

A. That is correct.

Q. Does it ever happen that the same type operator when you mention the necessity for mechanical examination of his truck he loses interest in working for your company?

A. That is correct.

Mr. Tobin: Thank you. That is all.

By Mr. Idol:

Q. Are you familiar with the A.T.A. proposal, Mr. Ratner?

A. No, sir.

Q. You are not?

A. Only generally. There has been a lot of general discussion about it. I am not familiar with the details. I am sorry.

Q. You are opposed to trip leasing, that is quite evident. Currently, if I follow your testimony, you are engaged in trip leasing because other carriers are doing it and because it is cheaper and keeps your costs lower than they would be if you owned or trip leased on long term leases enough equipment to handle your business?

[fol. 2501] A. Are you asking me a question?

Q. Yes.

A. What is the import of that question? I am not clear on it.

Q. Are you currently trip leasing because costs are lower under that type of operation than they would be if you owned or long-term leased enough equipment to handle your entire volume of business?

A. Well, I would not want to say the costs are lower under that type of operation. Actually, in some cases, you pay these trip lease fellows more money by far than it would cost you to operate your own trucks even allowing for idle time and seasonal fluctuations.

Q. I did not get that at all, Mr. Ratner. My understanding of your answer to Mr. Todd as to why you used 5 to 10 percent of trip lease equipment is that it is cheaper to do that than to own or long term lease your full equipment requirements.

A. No, I did not want to give you that impression. I said it is a condition that exists with a number of carriers and in order to be competitive and to be in the same position that they are in in territories where they have these depressed rates, because of one proposition, we use them to be competitive.

Q. Your being competitive does not mean operating on the same cost basis. Then, I have no answer as to why you are currently engaged in trip leasing. I think the way you expressed it in direct testimony is that you are now trip [fol. 2502] leasing because it is necessary from a competitive basis, and that simply means, in sum, that it costs you less money to operate that way.

A. In some territories it does, and in other territories it costs you more.

Q. Do you use trip leasing where it costs you more *that* it would to own or long term lease your equipment in any territory?

A. For example, if you ran a trip lease truck Chicago to Cleveland, and trip leased him from Cleveland to St. Louis, you would be paying him rates at both Chicago and Cleveland for his trip lease services far in excess of what you could operate your own truck for. But if you could hire him in St. Louis to run a trip to Chicago or Cleveland, you would hire that same truck for a lot less per mile or per ton than you did in the opposite direction; and in order to be in the same relative position as our competitors, we engage in a certain amount of this trip leasing. Now, I am not sure whether it is cheaper in the long run or more expensive.

Q. You mean you haven't analyzed it that far?

A. I have, but I have not been able to arrive at a deduction on it. I know it is undesirable.

Q. But you are not certain of the cost, what the ultimate cost would be?

A. No, I am not because it would depend on the number

that you use at Cleveland versus the number you use at St. [fol. 2503] Louis. Then you may find a situation where even at Cleveland you would have a lull in traffic and some fellow you have to pay ten dollars a ton to take a load to St. Louis for one day would come and offer to haul it for six dollars a ton during a time when traffic was slow, and it would be pretty hard work to analyze it. I have never been able to arrive at a conclusion.

Q. Now, over to the other side of the fence, Mr. Ratner. As I recall it, you testified that some of your long term operators switch to wild-catting or itinerant work because they thought they could make more money out of it that way.

A. That is correct.

Q. And your can't get those same men engaged in that type of operating to go on your long term lease deals.

A. That is understandable because in our operation we have to obligate ourselves to serve our shipper in all territories, wherever he directs our truck to operate. These owner-operators can work around and high-spot the market on this wild-cat arrangement or trip lease arrangement, and they can jump over the blank sides and keep working these spots where the traffic is heavy and there is extreme demand for trip lease operator, and by taking that type of operation they can make more money.

Q. I submit to you, Mr. Ratner, under the current trip leasing system, the independent owner-operator, or the wild-catter handling five to ten percent of your business, he is making more money on five to ten percent he is handling [fol. 2504] as an independent owner-operator, and your costs are lower than if you owned or long term leased all of your equipment. I could not get you to agree with the second portion of that, but I will ask you again if that is not the exact situation.

A. Well, it is lower at St. Louis, and it may be lower at Indianapolis, but at Milwaukee and Cleveland and Pittsburgh, where there is an abundance of freight, and Chicago, it costs us more by far to use an owner-operator for a one way trip than it does to run one of our regular long term leased operators or our own truck.

Q. I understand that. That is repetition.

A. So then it becomes a question which traffic are we hauling most of with one trip owner-operator, whether St. Louis or Indianapolis traffic, or the others, and I have never been able to decide that and I can't give you an opinion on it.

Q. But you are currently using five to ten percent?

A. Using them at all places.

Q. And you are able to own or long term lease all your own equipment if you desire to take that step?

A. Yes, sir.

Exam. Lawton: He said that several times.

By Mr. Idol:

Q. Is there any difference between your inspection practices with respect to independent owner-operators equipment and with respect to equipment that you get from authorized carriers?

[fol. 2505] A. We do not inspect the equipment we get from authorized carriers.

Mr. Idol: That is all.

By Mr. Keas:

Q. Are you familiar at all with the extreme lack of ability of the carriers from the St. Louis area into Michigan to transport the traffic during the last year, during the last several years?

A. I did not know that there was such a lack.

Q. You did not know about that situation?

A. I know that one operation, Mr. Keas, we transported many tons of freight each day from St. Louis into Michigan, and we don't treat it any differently when it is in to Michigan than we do if it were to go in to Wisconsin, or Ohio, or any other State.

Q. That is not the question.

A. As to the general condition down here, I am not aware of it.

Q. Now, what is the very minimum time in which you could cancel any long term lease?

A. Thirty days.

Q. You could not cancel it in any less than that for any cause?

Exam. Lawton: That also has been asked and answered before.

Mr. Keas: All right.

A. I might in the way of explanation say we could dispose of the driver for good cause immediately, but we would keep the vehicle in operation with one of our own drivers to meet the terms of our lease which provide for 30-day cancellation.

[fol. 2506] By Mr. Keas:

Q. Do you have any of the Central States motor Freight Bureau tariffs in any of your offices?

A. I think we do at Chicago.

Q. Do your rate clerks customarily refer to them?

A. No, sir; No, the only time we refer to them is when we have to prepare an answer to a suspension request and then we check the accuracy of their allegations. Sometimes they can't even read their own tariffs.

Mr. Keas: That is all.

Exam. Lawton: Did you have any questions, Mr. Jessup?

Mr. Jessup: No.

Exam. Lawton: Is there any redirect?

Mr. Diehl: I have a couple of questions that would not take but a minute.

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record.

By Mr. Diehl:

Q. Mr. Ratner, how many of your long term lease operators are compensated by your company for a full year of physical operations for your company?

A. In the past several years we have used all of our trucks to the fullest capacity the year around. In times when the seasonal fluctuations will begin to show their real and true effect, we will lay off the employees by virtue

of seniority, and the owner-driver who is a full time long [fol. 2507] term owner-driver will work on seniority along with our own drivers who drive our own trucks, and when he is laid off he will park his vehicle, or when our own driver is laid off we will park our vehicle, and they take the same risks in that direction for the season fluctuations as we do when we buy our own trucks.

Q. Now, you speak of parking his unit, that is the owner-operator, when you lay him off. What you mean is, he takes it out of your business?

A. No, sir.

Q. He does not leave it physically there?

A. Oh, sure.

Q. Even when he is off your payroll for three months?

A. Oh, we never lay them off in that manner. What we do is rotate the trucks, the first one in in the morning is the first one to work, and when we begin to see—you have to go back now to the periods 1937 and 1938, which are ten years ago, to run into periods where you run into situations involving the parking of equipment: Since the war preparedness program we haven't had that situation, since 1941. We are getting back to it now. We are going to start running into it.

Q. Go ahead. Does that conclude your statement?

A. I think I have answered.

Q. Now, Mr. Ratner, when you spoke in answer to a question from Mr. Turney that you were perfectly willing to maintain a fleet the ear around sufficient to meet the [fol. 2508] peaks of your business, you meant to qualify that, did you not, by saying that you could lay off these owner-operators in the off peak season, isn't that right?

Mr. Todd: Objection. That is not right, or a reasonable conclusion even to draw.

Mr. Diehl: Well, I submit he can answer yes or no. I asked him, isn't that right?

By Exam. Lawton:

Q. Is that right?

A. No.

By Mr. Diehl:

Q. Then, will you tell me what you do, would you pay an owner-driver for a slack period of time when he is not working for you? You have laid him off, and he is parked, you would not pay him anything during that time, would you?

A. No, sir.

Q. So that when you spoke of maintaining a fleet sufficient to meet the peak, you must of necessity qualify it in the fashion I have just asked you about, isn't that correct?

A. Well——

Q. Well, I will ask it this way.

A. Let me explain, make this explanation, please. We have in our operations about one or two months out of the year, generally December and January, when it often becomes necessary to park our own vehicles and this, of course, has to predate the war program because during the last ten years that situation did not exist. If you were to go back to 1937 or 1938——

[fol. 2509] Q. You told us that, Mr. Ratner, you told us, sir, about that, and that we are now getting into it again, isn't that right?

Mr. Todd: Mr. Examiner, I think the reason we are getting into long discussions, the questioning is argumentative. The facts have been established.

A. We would lay them off according to seniority.

Exam. Lawton: Wait a minute. Go ahead.

A. We would lay them off according to seniority, but before laying any off and parking the vehicle as such, we would first work for four days a week, and then three days a week, to where we reached the point where it became impractical, certain ones would be laid off, certain of our equipment would be parked and our drivers would be laid off.

By Exam. Lawton:

Q. Do I understand you correctly, you treat them all alike, owner-operators and your own drivers?

A. Under the long term leases.

Q. Under the long term leases?

A. Under the long term leases.

Q. On a seniority basis?

A. That is correct. The Union demands that, but during periods when our business is slow we do not hire any trip lease fellows.

Q. You do not guarantee a 12 months wage to any out of the year, to any of your trip lease operators?

A. No, or to our company operators.

Mr. Diehl: That is the point I was trying to get at.

[fols. 2510-2516] Exam. Lawton: If there is nothing else, I take it there is not, you are excused.

(Witness excused.)

Exam. Lawton: Are there any more witnesses to be heard?

The Examiner hears none.

This hearing is adjourned to Washington, D. C., 9:30 o'clock a. m., December 13.

(Whereupon at 12:40 p. m., December 9, 1948, hearing adjourned to 9:30 a. m., December 13, 1948, at Washington, D. C.)

[fol. 2517] Proceedings—Washington, December 13, 1948.

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C. J. Werlla was sworn and testified as follows:

Direct examination

By Mr. Blaine:

Q. Will you state your name, Mr. Werlla, also your residence and occupation?

A. C. J. Werlla, general merchandise agent, Missouri-Kansas-Texas Lines, Dennison, Texas.

Q. You have a statement you would like to read into the record at this time, Mr. Werlla?

A. Yes, sir.

Q. Proceed, please.

A. The M.-K.-T. Railroad, under authority of the Commission's certificate MC-54669, operates a coordinated rail-highway service. Its plan of operation and copy of agree-